

In the United States District Court
 District of South Carolina
 Columbia Division

Case No: 3:07-3782-JFA

Carlos Edward Martin and
 Tashiana Anita Martin,

Plaintiff(s),

Deposition

vs.

of

Leon Lott, as
 representative for the
 Richland County Sheriff's
 Department, Deputies Ben
 Fields and Joseph Clarke,
 in their individual
 capacities as deputies
 with the Richland County
 Sheriff's Department,

DEPUTY BENJAMIN P. FIELDS

ORIGINAL

Defendant(s),

Deposition of DEPUTY BENJAMIN P. FIELDS, taken
 before Jennifer L. Thompson, CVR, Nationally Certified
 Verbatim Court Reporter and Notary Public in and for the
 State of South Carolina, scheduled for 9:30 a.m. and
 commencing at the hour of 10:02 a.m., Thursday, November
 12, 2009, at the office of Davidson & Lindemann, P.A.,
 Columbia, South Carolina.

Reported by:
 Jennifer L. Thompson, CVR

1 APPEARANCES

2

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8

9

For the Defendant(s):

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13

Also present:

14 Scott Hayes, Esquire, RCSD

Charles Bonner, Esquire

15 Leigh Anne Wills, Paralegal

Shelley Stafford, Paralegal

16

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EXHIBITS

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Exhibit No. 1: Incident Report (3 pgs)

24

Exhibit No. 2: Statement (2 pgs)

Exhibit No. 3: Photo (1 pg)

24

1 STIPULATIONS

2 This deposition is being taken pursuant to the
3 Federal Rules of Civil Procedure.

4 - - - -

5 The reading and signing of this deposition is
6 reserved by the deponent and counsel for the
7 respective parties.

8

9 Whereupon,

10 DEPUTY BENJAMIN P. FIELDS, being duly sworn
11 and cautioned to speak the truth, the whole
12 truth, and nothing but the truth, testified
13 and deposed as follows:

14 Court Reporter: State your full name for the
15 record, please.

16 Witness: Benjamin Paul Fields

17 - - - - -

18 DIRECT EXAMINATION

19 BY MR. MILLS:

20 Q Deputy Fields, I'm Chris Mills. I represent
21 Tashiana Martin, and I'm going to be asking you
22 some questions about an incident back on October
23 24, 2006.

24

25 MR. MILLS: Madame Court Report, can we go ahead

1 mark --

2

3 Q Well, let me ask you first. The incident report
4 there that's in front of you, do you see that?

5 A Yes, sir.

6 Q Is that your incident report from that event?

7 A Yes, sir, it is.

8 Q Is that your own handwriting?

9 A Yes, sir.

10 Q And when did you write that report?

11 A On 10/24/05, October 24, 2005.

12 Q All right. So the same day of the incident?

13 A Yes, sir.

14 Q Would you have written it at the incident site or
15 back at the station?

16 A At the incident site, most likely.

17 Q All right. Do you remember when at the incident
18 site you wrote that?

19 A It probably would have been right after the
20 incident took place.

21 Q Okay.

22 A Where they were transported. I mean, I know it was
23 after -- right after the incident took place,
24 whether they were on scene or not. We have -- it
25 was a lot of paperwork to fill out, so.

1 Q It would have been after EMS had come there,
2 correct?

3 A Yes, sir.

4 Q Okay. And probably after they had been transported
5 away?

6 A That's correct. Yeah. Most likely.

7 Q All right. And when you went to the Criminal
8 Justice Academy were you trained in writing
9 incident reports? Did you cover that in your . . .

10 A Yeah, we covered it, but we were really trained in
11 writing incident reports when we got into our field
12 training officer once we graduated the Academy.

13 Q Okay. Just kind of like the OJT and the riding
14 with and officer?

15 A Yes, sir.

16 Q And writing the report up afterwards and him
17 reviewing it?

18 A Yes, sir.

19 Q Or her.

20 A Yes, sir.

21 Q I understand you had been on the Department about a
22 year and a half by the time this incident happened,
23 is that about right?

24 A I think so, yeah.

25 Q And had you gone through the on-the-job training

1 about writing an incident report?

2 **A Yes, sir.**

3 Q All right. And did you feel comfortable with
4 writing incident reports?

5 **A Yes, sir.**

6 Q All right. And did you attempt to be accurate in
7 your incident report?

8 **A I did.**

9 Q As I read this one, it appears to flow in
10 chronological order. Is that the way you usually
11 write about it, in sequences - This happens, this
12 happens next, in that kind of order?

13 **A Yes, sir.**

14 Q Were you able to do that in this case?

15 **A For the most part, I believe so, yeah.**

16 Q All right. Was there any part that was not
17 sequentially in order?

18 **A From reading over it, I believe it as all -- I**
19 **believe I put it in the best order I could have.**

20 Q And you just had a chance to look over it just --

21 **A Yes, sir.**

22 Q -- a few minutes before we started this deposition.

23 **A Yes, sir.**

24 Q All right. I'd like to turn your --

25

1 MR. MILLS: Can we mark that as Exhibit No. 1,
2 please?

3

4 (Whereupon, October 24, 2005 Incident
5 Report, consisting of 3 pages, was marked
6 Exhibit No. 1 for identification.)

7

8 Q I want to skip over your confrontation with Mr.
9 Martin and I want to focus on the incident report
10 and Mrs. Martin's arrival onto the scene.

11 A Okay.

12 Q You have described having to have a confrontation
13 with Martin in the first two pages, and on the
14 third page, let's see, seventh line. And the
15 sentence before it says, "C. Martin loud and verbal
16 comments over and over again stop resisting, get
17 your hand behind your back." Do you see that?

18 A Yes, sir.

19 Q And then your next sentence says, "At this time
20 about 15 to 20 people gathered." Is that correct?

21 A Yeah. That's what I wrote, sir. Yes, sir.

22 Q And at that time, Tashiana Martin came out, is that
23 correct?

24 A Yes, sir.

25 Q All right. So Tashiana Martin was not out there

1 originally causing a scene to draw this crowd out
2 there, was she?

3 **A Ask the question one more time, please. I mean, I**
4 **just want to clarify the question.**

5 Q Well, as I understand it, Martin was yelling and at
6 that time a crowd of 15 and 20 people gathered,
7 correct?

8 **A Correct.**

9
10 MR. GARFIELD: Carlos Martin was yelling?

11 MR. MILLS: Yes.

12
13 Q "C. Martin loud verbal comments over and over again
14 stop resisting get your hand behind your back. At
15 that time, about 15 and 20 people had gathered."
16 Is that correct? That's what you said?

17 **A Yeah. That's what I have in my report, yes, sir.**

18 Q And then -- It doesn't then. "And Carlos Martin's
19 wife, T. Martin, came outside with her camera
20 phone." Right?

21 **A Correct.**

22 Q And so she comes out after the crowd has gathered
23 with a camera phone, is that correct?

24

25 MR. GARFIELD: Object to the form. Go ahead.

1

2 **A** **People had gathered and then she came out, that's**
3 **correct.**

4 **Q** And my question was, they had gathered before she
5 had come out?

6 **A** **Some people had, yes.**

7 **Q** Okay. Well, you said about 15 to 20 people had
8 gathered before she came out, is that right?

9 **A** **Yes, sir.**

10 **Q** Did more people come after that?

11 **A** **I don't know. I don't have that in my report, I**
12 **don't believe.**

13 **Q** Okay. And then going down here a bit, and I
14 understand you had some officers, Clarke and Smith,
15 come assist you --

16 **A** **Yes, sir.**

17 **Q** -- with Mr. Martin, is that correct?

18 **A** **Yes, sir.**

19 **Q** And if you go down the page, I think we see "Two
20 knee strikes to the right side of the body.
21 Finally . . ." -- You see the finally part?

22 **A** **Yes, sir.**

23 **Q** "Finally Clarke and Smith got there and C. Martin
24 was handcuffed." Is that correct?

25 **A** **Yes, sir.**

1 Q All right. And then you say, "At that time,
2 Tashiana Martin came running outside cursing and
3 yelling." Where did she come from?

4 A I don't know. I mean, I can assume, but I don't
5 know.

6 Q Just your best -- I mean, you said she came
7 outside. Was she coming from outside the house?

8 A She was coming from outside --

9 Q The apartment?

10 A -- from the apartment building.

11 Q Okay. So she wasn't right there at the time that
12 Clarke and Smith first responded to the scene?

13 A Probably not, no.

14 Q Because she came outside, right?

15 A Correct.

16 Q Okay. Now, you've given a statement as well, is
17 that correct?

18 A Yes, sir.

19 Q And when did you write that statement?

20 A I probably -- Well, let me see if there's a date on
21 here.

22 Q I didn't see one, so that's why I'm asking.

23 A Well, they called me into Internal Affairs to write
24 the statement. I'm not sure -- I'm not quite sure
25 of the date of it.

1 Q Okay. But you think this statement was done in
2 response to request by Internal Affairs?

3 A Right. It could have been a couple days after. It
4 could have been a week after. That type of thing.
5 That's typically how they handle that.

6 Q Okay. So that was done -- you knew then a
7 complaint had been filed against you over this
8 incident, correct?

9 A Yes, sir.

10 Q And I assume, then, you would have taken even more
11 care and time in writing out this statement to make
12 sure it was accurate?

13

14 MR. GARFIELD: Object to the form. Go ahead.

15

16 A Sure. I mean, I could have. I think I try to take
17 my time writing both.

18 Q Right. Okay.

19 A More time, I mean, I think I try to, you know, --

20 Q Sure. I understand.

21 A -- be as consistent as possible. Sometimes you
22 remember things.

23 Q Sure. And what I'd like to draw your attention to
24 in this instance, in about midway down, your
25 sentence you said, "I advised Mr. Martin who handed

1 me an ID." Do you see that?

2 **A Yes. I see that.**

3 Q And "at that time to calm down, but he, again,
4 continued to curse and be irate about the situation
5 saying the same things over and over again, 'you
6 racist cop, mother fucker, this is bullshit.'" Is
7 that what was going on?

8 **A Yes, sir.**

9 Q And you advised him to calm down, but he didn't, is
10 that right?

11 **A Yes, sir.**

12 Q And here, again, you say at this time a crowd was
13 gathering because -- and Mr. Martin was still
14 making a scene, is that correct?

15 **A Yes, sir.**

16 Q All right. And then down a little bit later on you
17 say, "I turned Mr. Martin around and he started
18 yelling for his wife. I got one cuff on his right
19 hand and then Mr. Martin started to fight and fling
20 his left arm and kick." Is that right?

21 **A Yes, sir. I'm with you.**

22 Q All right. So, again, his wife is arriving on the
23 scene after a crowd is gathered, is that correct?

24

25 MR. GARFIELD: Object to the form. Go ahead. Asked

1 and answered. Go ahead.

2 MR. MILLS: No. I'm asking him about this
3 statement, Mr. Garfield.

4 MR. GARFIELD: Versus what happened?

5 MR. MILLS: No. I'm asking if that's what he wrote
6 in this statement.

7 MR. GARFIELD: Oh, you're just asking if that's what
8 he wrote in the statement?

9 MR. MILLS: Uh-huh. I don't think I had asked him
10 about it before, but maybe I'm wrong.

11 MR. GARFIELD: That's fine. Go ahead and answer it.

12

13 **A If you could ask the question one more time.**

14 Q That Ms. Martin arrived after the crowd had
15 gathered. Is that what you said in this statement?

16 **A I'm trying to look where I put the crowd gathered**
17 **in this statement.**

18

19 MR. GARFIELD: Could you maybe show him, Chris,
20 where you're talking.

21 MR. MILLS: Sure.

22

23 **A I see the part where she came outside.**

24 Q "You racist assed cop. I advised Mr. Martin to
25 calm down; he did not. At this time, a crowd was

1 gathering."

2 **A Okay. I got you. Yes, sir. I'm with you now.**

3 **Q** And then later on you talk about Ms. Martin taking
4 pictures.

5 **A Came outside. Yes, sir.**

6 **Q** Okay. Now, on the next page at the top --

7 **A Okay. I mean, I did answer your question already?**

8 **Q** Yes, you did. I'm sorry. I apologize. I'm now
9 moving on to the -- Towards the bottom of the first
10 page you say, the last sentence on the bottom of
11 the first page, "then after about five or so
12 minutes another unit showed up, Deputy Clarke and
13 Smith." And then moving up top of page. And then
14 you say "that Martin still did not comply. Clarke
15 pushed his head down, Smith grabbed his left arm,
16 got up behind his back." And then you say "then
17 out of nowhere came Ms. Martin yelling and
18 cursing." Is that right?

19 **A Correct.**

20 **Q** So that's, again, her arriving on the scene out of
21 nowhere because she was not there during that time,
22 is that correct?

23

24 MR. GARFIELD: Object to the form. Go ahead.

25

1 **A** She was there taking pictures with the camera
2 phone.

3 Q Right.

4 **A** And then she went somewhere.

5 Q Left.

6 **A** And then she came -- This is her coming back.

7 Q And when she came back --

8

9 MR. GARFIELD: I'm sorry. Were you through with
10 your answer?

11

12 **A** Yes, sir.

13

14 MR. GARFIELD: Just be sure not to talk over each
15 other for the court reporter to take
16 everything down. Thank you.

17

18 Q You want to add anything else?

19 **A** Just quickly, she arrived and left twice, according
20 to my report and the Internal Affairs statement.

21 Q All right.

22 **A** That's what I have written down.

23 Q Okay. Just want to make sure about that. Now, I
24 understand during the time that the crowd was there
25 that no one threatened you. Nobody in the crowd

1 threatened you.

2

3 MR. GARFIELD: Object to the form. Go ahead.

4

5 **A I mean, I don't remember, but I don't have it**
6 **written down anywhere.**

7 Q Okay. Is it also true that no one in that crowd
8 tried to interfere with you?

9

10 MR. GARFIELD: Object to the form. Go ahead.

11

12 **A No one physically interfered, that's correct, sir.**

13 Q Now, you remember testifying in the criminal trial,
14 right?

15 **A Somewhat, yeah. I mean, I do remember --**

16 Q Oh, sure. I mean, I'm not asking you to remember
17 verbatim what you said.

18 **A Okay. Yes, sir. I do remember.**

19 Q But I'm looking at a transcript here and the
20 question was asked of you at the time, well, did
21 anybody -- did you hear anybody threaten you. And
22 your response at the time is, I did not hear
23 anybody threaten me, no. So was that accurate and
24 truthful at the time you said it in the criminal
25 trial?

- 1 **A** If I could see it, sir.
- 2 **Q** You could. Sure.
- 3 **A** Okay. Yes, sir. That was -- Yes, sir.
- 4 **Q** That's what you said?
- 5 **A** Yes, sir.
- 6 **Q** And then the second question is, did anybody in
- 7 this crowd, this mob, try to assault you or
- 8 interfere with what you were doing. And your
- 9 response was what?
- 10 **A** No, sir.
- 11 **Q** Okay. I understand you work out at a place called
- 12 Ironworks or what's it called?
- 13 **A** South Carolina Barbell.
- 14 **Q** South Carolina Barbell. Where is that located?
- 15 **A** On Two Notch. You know where Sesqui Station is?
- 16 **Q** Sure.
- 17 **A** It's like a bunch -- there's a bunch of different
- 18 like doctors office and things like that --
- 19 **Q** The little small areas off to the right?
- 20 **A** Yeah. There's a gym up in there.
- 21 **Q** Okay. And do you live out in that area?
- 22 **A** No, sir.
- 23 **Q** Where do you live?
- 24 **A** I live down by the football stadium. You want my
- 25 address?

1 Q No, no. That's all right. I'm just curious why
2 you work out there, at the Barbell place.

3 A Why do I?

4 Q Yes, sir.

5 A Because I power lift.

6 Q Okay. And how much can you lift?

7 A There's a lot of different lifts --

8 Q Okay. I'm sorry. Yeah, you're right. Let's go
9 back. How about just bench pressing.

10 A My best bench is 475.

11 Q Okay. And you do, what, like 25 reps or what do
12 you --

13

14 MR. GARFIELD: Object to the form. Go ahead.

15

16 A No. Power lifting is a sport, like you try to lift
17 as much as you can one time.

18 Q Okay.

19 A Yes, sir.

20 Q Do you do some training for that? I mean, I assume
21 you do some -- you have to build up the muscles to
22 be able to withstand that kind of a -- like a jerk
23 or something like that, right?

24 A Yes, sir.

25 Q And how long have you been power lifting as a form

1 of exercise?

2 **A I think maybe three or four years now. I don't**
3 **know exactly, though. But I think -- I don't**
4 **remember exactly when I started.**

5 Q Okay. Were you doing it at the time when this
6 incident happened on October 24, '05?

7 **A I really don't remember.**

8 Q Okay. Were you working out somewhere before that?

9 **A Yes, sir.**

10 Q Okay. You seem to be in pretty good physical
11 shape. Is that something you've taken care of
12 throughout your life?

13 **A Yes, sir.**

14 Q Did you play sports in high school?

15 **A Yes, sir.**

16 Q What did you play?

17 **A Basketball and football.**

18 Q All right. And where was that? Where did you grow
19 up?

20 **A I grew up in Pennsylvania.**

21 Q Okay. What part?

22 **A Lancaster.**

23 Q All right. And what year did you graduate from
24 high school?

25 **A 2000.**

1 Q And what was the name of the high school?

2 A Well, I went to Penn Manor High School for my first
3 three years and then I went to a private Christian
4 school my senior year.

5 Q Okay. I understand you went off to school in
6 Kansas.

7 A Yes, sir. A junior college in Kansas.

8 Q Was that directly after high school?

9 A Yes, sir.

10 Q All right. So that would have been until like
11 2002?

12 A Yes, sir.

13 Q All right. And did you get an associate's degree
14 from there?

15 A Yes, sir.

16 Q And after that you came to Columbia because your
17 parents had moved down here?

18 A Yes, sir.

19 Q And what kind of work did you do? Did you go to
20 school? Did you decide to work?

21 A Oh, I went -- I took some courses at Midlands Tech,
22 but I worked for my dad for a year.

23 Q Okay. What did your dad do?

24 A He's the executive director of the Oliver Gospel
25 Mission.

1 Q Okay. And you worked there at the Mission?

2 A Yes, sir.

3 Q Okay. And when did you make a decision that you
4 were going to go into law enforcement?

5 A I guess it was about a year working for him. I put
6 my application in for Richland County.

7 Q Okay. Had you had any previous experience or
8 interest in law enforcement?

9 A No, sir, I did not.

10 Q What drew you to it?

11 A I took some courses at Midlands Tech and one of the
12 guys who taught the course was a Deputy Sheriff for
13 us.

14 Q Okay.

15 A And so he encouraged me to put my application in.

16 Q All right.

17 A And I did.

18 Q Do you remember who that Deputy Sheriff was?

19 A Yeah. Flynn Tanner.

20 Q Okay. Were you hired on the first application?

21 A Yes, sir.

22 Q And so your attendance at the Criminal Justice
23 Academy -- Well, what was your class at Midlands
24 Tech?

25 A Well, I took -- I think I took three altogether. I

1 took Criminal Justice 101.

2 Q Okay.

3 A I can't remember now. Criminology, I think. And
4 one other one. I can't --

5 Q Was it also in the Criminal Justice --

6

7 MR. GARFIELD: Hold on. Hold on. I'm sorry, Chris.

8 Were you through with your answer?

9

10 A Yes, sir.

11

12 MR. GARFIELD: Okay. Go ahead.

13

14 Q No, please add anything you'd like.

15 A No, no. Yeah. I mean, it was those three. All
16 three criminal justice courses.

17 Q Okay. Thank you. And so that kind of sparked
18 your interest in it, is that what I understand?

19 A Yeah, I guess. Yeah.

20 Q Okay. Was is it an economic thing as well? I
21 mean, were you looking for a career or . . .

22 A Not really. I mean, I didn't know how long I was
23 going to do it for.

24 Q All right. Did you have any legal classes when you
25 were at Midlands Tech about the law in those

1 criminal justice classes that you took?

2 **A Yeah, I had one. I think it was a criminal law**
3 **class I want to say.**

4 Q And what did it -- What was the general topic
5 matter of that?

6 **A Just going over laws and things like that, as far**
7 **as I can remember. And I don't remember it very**
8 **well.**

9 Q Okay. Do you remember what kind of grades you got
10 in it?

11 **A I'd have to look. I think a B. I think. I don't**
12 **know for sure, though.**

13 Q All right.

14 **A I'm speculating.**

15 Q When you say the laws, are you talking about just
16 South Carolina criminal laws, criminal law in
17 general?

18 **A Probably both, I would think. But I don't know for**
19 **sure. I mean, it was a real thick book.**

20 Q Okay. Was it an introductory course?

21 **A It probably was.**

22 Q So other than that the only other -- I guess you
23 went to the Criminal Justice Academy here, correct?

24 **A Yes, sir.**

25 Q The nine week course?

1 **A Yes, sir.**

2 **Q All right. And the Richland County Sheriff's**
3 **office sent you to the Academy prior to you**
4 **attending -- going on the job with them? Well, how**
5 **did that work? Tell me how it worked.**

6 **A Well, I was hired in the courthouse originally.**

7 **Q Okay.**

8 **A And I got an academy slot.**

9 **Q Okay.**

10 **A And then once I went to the academy then I was on**
11 **the road.**

12 **Q When did you start your courthouse slot with the**
13 **Richland County Sheriff's Department?**

14 **A January of 2010. Oh, I'm sorry. January 10, 2004,**
15 **I believe.**

16 **Q Okay. January 10, 2004.**

17 **A Yeah.**

18 **Q How long were you in the courthouse?**

19 **A About a year.**

20 **Q Okay. So that would take us to January '05.**

21 **A Yeah. Well, a little past that probably before I**
22 **actually -- I mean, I got an academy date.**

23 **Q When was your academy date?**

24 **A Well, I had an -- I got promoted and had an academy**
25 **date like I think in November or December. But I**

1 **had to wait to go to the academy until March.**

2 Q Okay. So you graduated from the academy in March -
3 - No. I go is would it be April or May.

4 **A It would have been May.**

5 Q May. Okay. So you actually graduated from the
6 academy approximately about five months before this
7 incident?

8

9 MR. GARFIELD: Object to the form. Go ahead.

10

11 **A Yes, sir.**

12 Q How long was it between the time that you graduated
13 from the academy until this incident?

14 **A I'll do the math now. About five months.**

15 Q Okay. Did you have some trips with a master
16 sergeant? Did you do training with a master
17 sergeant?

18 **A No --**

19 Q Not a master sergeant, but a training officer?

20 **A Yes, sir.**

21 Q A field training officer, excuse me, FTO.

22 **A Yes, sir.**

23 Q And how long did that go on?

24 **A It's twelve weeks, I believe, at the time.**

25 Q Okay. So that's four months, is that right? Or at

1 least I'm using twelve weeks to equal four --

2 Excuse me, three months.

3 **A Yeah, about three months.**

4 **Q Three months. I apologize, my math's bad.**

5 **A That sounds about right. Yeah.**

6 **Q All right. So by time it got to -- If you started**
7 May, did it for three months, we're talking about
8 June, July, August, is that correct?

9 **A Yeah. That's right. I got cut loose in August.**

10 **Q All right. And is that the point that you were**
11 placed in your patrol car?

12 **A Yes, sir.**

13 **Q Going back to the Criminal Justice Academy, did you**
14 have any classes in what's called legals?

15 **A Yes, sir.**

16 **Q All right. And did you study issues about what it**
17 takes, you know, reasonable suspicion, probable
18 cause to make an arrest?

19 **A Yes, sir.**

20 **Q And did you also discuss about constitutional**
21 rights of various individuals -- of citizens?

22 **A Yes, sir.**

23 **Q And did you cover, let's say, First Amendment**
24 rights of citizens in interacting with police?

25 **A Yes, sir.**

1 Q All right. And what is your understanding of a
2 citizen's right to oppose a police officer's
3 actions verbally?

4

5 MR. GARFIELD: Object to the form question. Go
6 ahead, Ben.

7

8 A I mean, they're allowed to. They're allowed to
9 object to you and curse at you and things of that
10 nature as long as they're not fighting words and
11 things like that.

12 Q All right. And on this incident date, which was --
13 I guess, how many resisting arrest charges had you
14 made before this?

15 A I really don't know.

16 Q Had you made any?

17 A I could have, but I honestly I just don't know.

18 Q I mean, we're talking about three months of being
19 on your own?

20 A Between FTO and being on my own, I really -- I may
21 have; I may not have. Like I said, I can't -- I
22 don't know.

23 Q Okay. How about breach of peace? Had you made any
24 arrests for breach of peace prior to this incident?

25 A I could have.

1 Q Is it you don't know? I mean, you could have as --

2 A Yeah. I mean, I don't know.

3 Q Do you have any specific memory of that?

4 A Not off the top of my head, no, sir.

5 Q Okay. Have you ever been in an instance where
6 you've arrested somebody and then you've tried to
7 figure what to charge them with after the fact?

8 A Just in general my whole career?

9 Q Uh-huh.

10 A Has that ever happened? Yes, sir.

11 Q Okay. Have you ever given -- other than the trial
12 of this case, have you ever given any other sworn
13 testimony about this incident?

14 A About this incident here?

15 Q Yes, sir.

16 A Besides my report, my IA statement, and I guess the
17 court, I don't believe so. Oh, and my question and
18 answer with Internal Affairs.

19 Q Okay.

20 A So, I mean, I guess that would go back to Internal
21 Affairs.

22 Q Okay. Do you compete in any power lifting
23 competitions?

24 A Yes, sir. All the time.

25 Q Is that city wide, statewide, regional?

1 **A** Statewide. It can be nationwide. I mean, it just
2 depends. But I've competed statewide.

3 **Q** Okay. Do you do it as well with -- in law
4 enforcement, don't they have their own competitions
5 on that sport as well?

6 **A** Yeah, they do. I don't -- I think I maybe competed
7 once with law enforcement.

8 **Q** But you compete with the public?

9 **A** Yes, sir.

10 **Q** You're in the big pool? The big pool. All right.

11 I'd like to ask you about what you saw
12 Tashiana Martin do when she came back. Let me ask
13 you this. Prior to her -- The first time she was
14 out there, did she do anything that violated the
15 law?

16

17 MR. GARFIELD: Object to the form of the question.

18 Go ahead.

19

20 **A** And if you don't mind, can I refer back to my
21 report?

22 **Q** Yes, sir.

23 **A** I have here in my report, after 15, 20 people had
24 gathered T. Martin came outside with her camera
25 phone began taking pictures of me on top on C.

1 **Martin. T. Martin was also yelling and cursing at**
2 **our -- and I don't have this anywhere in my report,**
3 **but I don't know if I was going to arrest her or**
4 **not at that point in time once we got the other**
5 **situation under control.**

6 **Q When she was -- What was she saying, you know,**
7 **yelling and cursing? Can you give me what she was**
8 **actually saying to you?**

9 **A No, sir.**

10 **Q You have no idea?**

11 **A I just know she was using foul language and taking**
12 **-- and, I guess, taking pictures with her camera**
13 **phone.**

14 **Q Okay. Now, there's nothing wrong with her taking**
15 **pictures, correct?**

16 **A No, sir.**

17 **Q All right. And would you say that her yelling was**
18 **directed to what she perceived as your conduct**
19 **towards her husband?**

20

21 **MR. GARFIELD: Object to the form. Go ahead. Calls**
22 **for speculation.**

23

24 **A Yes, sir.**

25 **Q I mean, she was objecting to the way you were**

1 treating her husband.

2

3 MR. GARFIELD: Object to the form. Calls for
4 speculation. Go ahead.

5 MR. MILLS: No, I'm saying what she said.

6 MR. GARFIELD: That's fine.

7 MR. MILLS: Not what she thought.

8

9 **A Well, again, I don't remember her exact words. But**
10 **I just know there was a lot of yelling and carrying**
11 **on.**

12 Q And it was directed at you?

13

14 MR. GARFIELD: Same objection. Go ahead.

15

16 Q Was it directed at you?

17

18 MR. GARFIELD: Same objection. Go ahead.

19

20 **A I would think so, yes.**

21 Q Okay. Did you see her yelling at anybody else?

22 **A I did not see her yell at anybody else, no, sir.**

23 Q Okay. Was the fact that she was yelling at you,
24 would that be a basis to arrest her?

25 **A Just yelling at me objecting to me?**

1 Q Yes.

2 A No, sir.

3 Q Objecting to the way you were --

4 A No, sir. Not objecting to the way. No, sir.

5 Q So yelling at you and what she saw you do to her
6 husband and taking the pictures, neither of those
7 would be grounds to arrest her, correct?

8 A Correct.

9 Q Okay. Now, I understand things changed from your
10 perspective when she came back out the second time.

11 A Yes, sir.

12 Q Is that fair?

13 A I think so, yes, sir.

14 Q All right. And I think in the second instance you
15 indicated she came out of nowhere or came outside
16 and that she essentially just kind of -- Well, tell
17 me what she did.

18 A According to our report, sir, she came running out
19 cursing and yelling and swinging at RO Clarke,
20 which was Deputy Clarke at the time. And she was -
21 - Again, I don't have this in my report, but,
22 basically, she was just out of control. We had to
23 restrain her in some way.

24 Q Would it be fair to say that she just kind of
25 attacked you?

1 **A** Not me. She was going after Deputy Clarke,
2 according to my report.

3 **Q** All right. And did she make contact with him?

4 **A** I don't believe so. I don't think I have that in
5 my report.

6 **Q** When you're saying swinging, what were you
7 describing? What was she --

8 **A** I mean, she was just flailing out of control,
9 upset.

10 **Q** Okay.

11 **A** Those types of actions.

12 **Q** So she came from wherever she was outside and came
13 and approached y'all?

14 **A** Yes, sir.

15 **Q** When's the first -- How far away was she when she
16 first -- when you first noticed that she was
17 coming?

18 **A** Not very far.

19 **Q** And tell me what you saw. As I understand it, she
20 comes running at you -- You're kind of describing
21 kind of, you know, correct me if I'm wrong, I don't
22 want to misstate, flailing, just kind of almost
23 wildly coming at you is the image I'm getting based
24 on your description, is that --

25 **A** She actually was coming at Deputy Clarke.

1 Q Deputy Clarke.

2 A Yes, sir.

3 Q Okay. Where was Deputy Clarke at the time she was
4 coming after him?

5 A He was -- I'm trying to remember back that far.

6 Q Sure. Take your time.

7 A Again, we had just -- Deputy Smith had control of
8 Mr. Martin.

9 Q Okay.

10 A So he was -- And then Deputy Clarke was trying to
11 move the crowd back, as I remember it.

12 Q Okay. So at the time that Ms. Martin came out
13 there, Deputy Smith had already gotten -- Was Mr.
14 Martin up in handcuffs moving towards -- away or --

15 A I really don't know. I really don't know.

16 Q Had you left from your contact with Mr. Martin at
17 that point?

18 A Yes, sir.

19 Q Okay. So you were no longer on Mr. Martin, is that
20 right?

21 A That's correct, sir.

22 Q And Deputy Clarke was no longer on Mr. Martin?

23 A That's correct.

24 Q All right. But she came out and she just came
25 after y'all as he -- as you're telling me he is

1 pushing back the crowd, is that correct? Or
2 telling the crowd to get back?

3 **A Yeah. Deputy Clarke was trying to move the crowd**
4 **back, and I was assisting him with that.**

5 Q And that's when she --

6 **A And that's when she came from, like I said,**
7 **wherever she came from, most likely the house, and**
8 **began to just flail in an out of control way**
9 **engaging Deputy Clarke.**

10 Q So at the time that that was happening, you were
11 actually facing the building or where these people
12 were? Correct me if I'm wrong.

13 **A I would think -- Yeah. As we're moving the crowd**
14 **back, yeah.**

15 Q I mean, the crowd -- Was the crowd in the parking
16 lot or --

17 **A Yeah. They were kind of all around, but mainly the**
18 **parking lot.**

19 Q Okay. And so you were facing that area? And when
20 I say that area, I'm talking about the building and
21 where the other people were, is that correct?
22 You're facing the crowd when you're trying to move
23 them back?

24 **A Yeah.**

25 Q Okay.

1 **A** **Yes, sir.**

2 **Q** Sorry. Silly question. I'm sorry.

3 **A** **That's okay.**

4 **Q** And I think you said that she went after Clarke.

5 And I'm talking about Ms. Martin.

6 **A** **Yes, sir.**

7 **Q** And how was that handled when she came after him?

8 Give me the sequence of what happened, who did

9 what, if you could.

10 **A** **Okay. If I can refer to my report.**

11 **Q** Feel free.

12 **A** **She came around yelling and swinging at Deputy**
13 **Clarke. At that point in time, I told her she was**
14 **under arrest for breach of peace because of how**
15 **loud she was and the language she was using.**

16 **Q** Based on her exit coming there at him at that
17 point, is that what you're saying?

18 **A** **Yes, sir.**

19 **Q** Based on her conduct from that point forward that
20 she was yelling at the officer and cursing, is that
21 right?

22 **A** **Yes, sir.**

23 **Q** Okay. And that was, in your mind, breach of peace?

24 **A** **Yes, sir.**

25 **Q** All right. Now, I thought you told me that you

1 could yell at the officers if you wanted to and you
2 could disagree with them.

3 **A** **Object to them, yes, sir. You can.**

4 **Q** So the yelling would not be part of the basis for
5 the breach of peace, would it, if it was directed
6 at the officers?

7 **A** **If they're fighting words and things of that nature**
8 **it could be and, again, depending on how loud she**
9 **was and things like that at the time. I mean, we**
10 **take all that in consideration. It wasn't just**
11 **based off, you know, I'm upset because of the way**
12 **you treated my husband, you know, stuff like that.**
13 **It was, at that point in time, -- Again, I don't**
14 **want to speculate. All I can do is refer to my**
15 **report. It happened a long time ago.**

16 **Q** I understand.

17 **A** **You know, she had objected earlier, obviously, when**
18 **she was taking pictures with the cell phone to me**
19 **the way that she felt like I was treating her**
20 **husband at the time. And when she came back down**
21 **the hill, I don't believe at that point in time,**
22 **although I think I do have in my Internal Affairs**
23 **statement some of the stuff she was saying when she**
24 **was coming out of the house.**

25 **Q** Well, let's take a look at that, if we can.

1

2 MR. MILLS: And I'm sorry. I don't think we've
3 marked your statement yet as an exhibit, so
4 let's go ahead and put that in there. And,
5 Robby, I failed to neglect about the Internal
6 Affairs.

7

8 (Whereupon, IA Statement, consisting of 2
9 pages, was marked Exhibit No. 2 for
10 identification.)

11

12 Q We're talking about now the Q&A? Because I think
13 this statement goes with the Internal Affairs.

14 A Yes, sir, it does.

15 Q And then you're welcome to look at that. And then
16 I think there was a Q&A that went with ultimately
17 as well.

18

19 MR. GARFIELD: Hold on. So we're talking --

20 MR. MILLS: Well, right now --

21

22 Q Let me just stop you for a second. You said about
23 her running down the hill.

24 A Yes, sir. I believe I have in my Internal Affairs
25 statement what she was saying or some of the things

1 she might have been saying while she was running
2 down.

3 Q Okay. Well, go ahead.

4 A Let me just find it quickly.

5 Q Sure. And on top of page two, if that's any help.

6 A Okay. Yeah, the top of page two. She came yelling
7 and cursing, you know, what the F are y'all doing
8 to him. F you mother f'ers and she was swinging at
9 me and Deputy Clarke. That's what I have in my
10 Internal Affairs statement.

11 Q Okay. So you -- I'm sorry.

12 A So, at that point in time, I felt like it was a
13 little more than objecting than to just what we
14 were doing. But, in fact, she was just very loud,
15 very boisterous and very disorderly at that point
16 in time, I felt like. And she was a threat to us
17 at that point in time. It went a little bit beyond
18 objecting at that point in time to what we were
19 doing.

20 Q So the verbal component of the breach of peace was
21 her saying what the fuck are y'all doing to him,
22 fuck you mother fuckers, right?

23 A Basically --

24 Q And the volume of it?

25 A The volume of it, the scene that it might have

1 caused. And, again, it was objecting to me as if I
2 write you a ticket for speeding and you might say
3 this is BS or whatever you might say. Say you
4 curse, okay. All right. Well, that's something I
5 just got to deal with.

6 Q Okay.

7 A You're not a threat to me, though.

8 Q Okay.

9 A In that sense. And I felt like at that point in
10 time because of how loud she was, because of her
11 actions on top of her yelling and carrying on, I
12 felt like it was breach of peace.

13 Q Now, you said the scene it was creating. Was an
14 additional scene created by when she came out and
15 said those words?

16 A Yes, sir.

17 Q All right. How was this scene increased or changed
18 as a result of that?

19 A Well, any time you have a big crowd like that, I
20 mean, it can -- we don't know -- Again, we don't
21 know the people in the crowd. We don't know if
22 they could become hostile or anything like that.
23 We don't know who knows who or anything of that
24 nature. And we had him handcuffed and subdued the
25 situation. We were trying to deter the situation

1 at that point in time, move the crowd back, let's
2 see what we got. And when she came running down
3 the hill it's like she kind of jumped that whole
4 scene back up again, in my mind.

5 Q Prior to that time, had the crowd been threatening
6 -- I mean, we talked about the threatening and the
7 interfering. But had they been cursing at you,
8 yelling at you, the crowd had been -- Had the crowd
9 been doing that prior to that time?

10 A No, sir, not to my knowledge.

11 Q Okay. So, essentially, it was her coming out and
12 ramping it up with this language that kind of
13 stoked the fire, so to speak?

14 A That's the way I interpreted it, yes, sir.

15 Q Now, coming at the officers and swinging at y'all,
16 that's not breach of peace, is it?

17 A No. I mean, if she would have hit us, obviously it
18 would be an assault situation. But her -- Like I
19 said, the volume of her voice and the language she
20 was using, the scene that she caused when she did
21 that would be the breach of peace.

22 Q Okay. And then, obviously, her attacking you, you
23 would have to defend yourself?

24 A Yes, sir.

25 Q All right. How did you go about doing that?

1 **A** If I could refer.

2 **Q** Sure.

3 **A** According to my statement, I don't have exactly,
4 but as I remember it, I basically put her up --
5 picked her up and put her on the ground.

6 **Q** Okay.

7 **A** I don't believe she was that big. I don't know. I
8 guess I could look in my report and see her size
9 and all that stuff. But, yeah, I believe I picked
10 her up and just put her on the ground.

11 **Q** Okay. Did you have any assistance from Deputy
12 Clarke?

13 **A** According to my -- Let me see here. I'm referring
14 to my IA, my Internal Affairs statement, it looks
15 like Deputy Clarke tried to get the cell phone out
16 of her hand -- out of her hand out of it. I don't
17 believe that makes sense. Deputy Clarke was --

18 **Q** Let me ask you this, if I could. The next part of
19 that you said I had not even taken notice of the
20 cell phone.

21 **A** Where are you at here, I'm sorry?

22 **Q** Oh, the same where you just were. It talked about
23 I could restrain her Deputy Clarke -- Several times
24 before I could restrain her, Deputy Clarke also
25 tried to get the cell phone in her hand out of it

1 that I was not even taking notice of. I had not
2 even taken notice of.

3 **A That's correct.**

4 Q So you didn't even know she had the cell phone in
5 her hand.

6 **A No, sir. I was trying to get her hands behind her**
7 **back at that point in time.**

8 Q Did y'all go up against a car prior to going to the
9 ground?

10 **A Not that I remember.**

11 Q Okay. Could that have happened?

12 **A It could have.**

13 Q Did Deputy Clarke, to your memory, ever at all
14 assist you in taking her to the ground?

15 **A Not that I remember.**

16 Q Can you describe to me the manner in which she was
17 taken to the ground? And I don't want you to do a
18 physical job. I mean, if you can just give me some
19 descriptive phrases of any techniques you employed
20 and how she actually got to the ground.

21 **A There was also probably a use of force report done,**
22 **I would think, in this whole situation. And I**
23 **don't have a copy of that.**

24 Q I think we do have a copy of that, and I can get
25 that to you if that will help you.

1 **A** **That would help me, yes.**

2 **Q** Okay. Sure. This may be my only copy. Well, let
3 me ask you this. We've got this as a unit, and I
4 don't know if it comes as a unit or if we
5 mistakenly tagged on the incident report.

6 **A** **It all kind of goes -- When we turn those in, it**
7 **all kind of goes together.**

8 **Q** You put the incident report with it as well?

9 **A** **Yes, sir, we do.**

10 **Q** Okay. I only have two pages attached to this one,
11 and I think your incident report there is three
12 pages.

13 **A** **That is correct. Yeah.**

14 **Q** So would you have attached the whole one?

15 **A** **I should have, yes, when I did it. That would be**
16 **the correct way to do it.**

17 **Q** And I don't know if this is going to be a lot of
18 help. I just kind of looked through it again
19 because I think it just deals with Carlos Martin
20 and not necessarily Tashiana Martin. But maybe,
21 you know, please.

22

23 MR. GARFIELD: Chris, if you're going to ask him
24 questions about that document, I'd like to
25 have an opportunity to --

1 MR. MILLS: Well, he asked for it, and so I gave it
2 to him.

3 MR. GARFIELD: I understand that. But you're
4 showing the document to him. Are you going to
5 ask questions directly relating to that
6 document, I guess is my question.

7 MR. MILLS: No, I'm not.

8 MR. GARFIELD: Okay.

9

10 **A Yes, sir, that is just referring to Carlos Martin.**

11 Q And, I'm sorry, I think that's the only one I have
12 so -- So should there have been a report written on
13 the use of force against Tashiana Martin?

14 **A I would think so, yes.**

15 Q Okay. Do you have any independent recollection of
16 submitting one?

17 **A I can't remember.**

18 Q Okay. I think when I kind of detoured you, I was
19 asking about the manner in which you took her down.
20 I know there's things like leg sweeps and straight
21 arm take down and those kind of things. So I'm
22 trying to get an understanding how she ultimately
23 got to the ground.

24 **A From my report, and again I can speculate, I really**
25 **don't remember clearly. It sounds like I used**

1 something called muscling techniques in the sense
2 it makes you just muscle a person. You're bigger,
3 you're stronger and you just kind of overtake them
4 and just put them on -- I mean, just --

5 Q Is it almost like a bear hug kind of situation?
6 Just wrap them up and is that what --

7 A That could --

8
9 MR. GARFIELD: Are you through with the question,
10 because I was going to make an objection?

11 MR. MILLS: No, go ahead and finish your --

12 MR. GARFIELD: Well, you said is that what and I
13 just -- Is that your question?

14 MR. MILLS: I'm going to let him finish --

15 MR. GARFIELD: Object to the form the question. Go
16 ahead and answer.

17
18 A Muscling techniques can be a lot of different
19 things. You know, according to my reports, when I
20 tried to restrain her she was -- obviously, I was
21 facing her because she was hitting me on my body
22 and things of that nature. So it could be
23 something like that, I guess, but I really don't
24 remember. I just know I probably just used some
25 muscling techniques to take her to the ground.

1 Q You don't want the -- whoever you're trying to
2 subdue to be facing you, do you?

3 A No, sir.

4 Q Okay. So one of the first things you might try to
5 do is get that person turned around, if you could?

6

7 MR. GARFIELD: Object to the form. Go ahead.

8

9 A I would want that, yes, when I'm arresting
10 somebody.

11 Q And I understand you're not necessarily in control
12 of what you're doing, but if you have that option,
13 that you're going to attempt to do that, is that
14 correct?

15 A That is the best option for you, yes.

16 Q Because, obviously, if you're grabbing them facing
17 you it's kind of hard to take them down.

18 A Well, no, you can -- Yeah, they have a lot more
19 access to you. That's right.

20 Q In this instance, do you know if you took her down
21 on her side, face first, on her back?

22 A As I remember it, I believe I put her down on her
23 face -- on her --

24 Q On her chest?

25 A On her chest, yes.

1 Q And what degree of force was used in that?

2 A As little as possible. And --

3 Q All right.

4 A Go ahead.

5 Q And I understand that's a relative term, little as
6 possible. I'm trying to ask you to quantify that.
7 Describe to me what as little as possible force
8 means when you take her down.

9 A Well, we're putting somebody on a cement ground
10 who's basically half my size.

11 Q Okay.

12 A And so I'm going to do that as quickly as I
13 possibly can.

14 Q All right.

15 A With, first, to make sure I'm not getting hurt.

16 Q All right.

17 A And, if at all possible, the subject not getting
18 hurt either.

19 Q Right.

20 A I don't believe she had any cuts or bruises on her,
21 and, again, I'm -- you know, I'm getting that from
22 -- I remember getting that from internal affairs
23 when it came up. So I think I did a pretty good
24 job as far as I how I put her on the ground and
25 doing it quickly as I possibly could. So that when

1 **I say as little as possible, I mean in the sense**
2 **that --**

3 Q I mean --

4

5 MR. GARFIELD: Were you through with your answer?

6

7 A **I am. I don't think I'm clear on what --**

8 Q That's okay. It's my job to ask the questions, so,
9 you know, if we have to struggle through it, we
10 will just kind of struggle through.

11 Were your hands under her when you put her
12 down there or would you be able to place her down
13 with your hands up? Hands on her, rather.

14 A **I don't remember.**

15 Q Let me ask, Did you injure yourself taking Tashiana
16 Martin to the ground?

17 A **I could tell you this. I had superficial cuts on**
18 **my hands and things like that. As far as being**
19 **injured out or anything like that, no. But I did**
20 **have some superficial cuts from the pavement. From**
21 **her, I don't know. It could have been from both**
22 **situations.**

23 Q Okay. So you can't say that you got the cuts from
24 her because you just had a protracted -- a much
25 longer protracted incident with Mr. Martin,

1 correct?

2 **A Yes, sir, that'd be correct.**

3 Q And that was struggling actually on the pavement,
4 correct?

5 **A Correct.**

6 Q And you were trying to get his hand out from under
7 him, correct?

8 **A Yes, sir.**

9 Q So you would have much more likely have come in
10 contact with the pavement in that situation than in
11 Ms. Martin's situation?

12

13 MR. GARFIELD: Object to the form. Go ahead.

14

15 **A I mean, it's possible in both. I mean, it's**
16 **possible both ways.**

17 Q Can you testify that you -- under oath, that you
18 received an injury from your contact with Tashiana
19 Martin?

20 **A Oh, no, I'm sorry. I would not testify to that,**
21 **no.**

22 Q Okay. In your description, is Deputy Clarke
23 helping you get her on the ground?

24 **A If you don't mind, quickly I'm going to refer back**
25 **to this.**

1 Q Feel free.

2 A In my report --

3 Q You're talking about now your incident report?

4 A Yes, sir. I'm going to refer to my incident report
5 here. No, I believe I did that by myself.

6 Q Okay. Do you recall Deputy Clarke -- you talked
7 about before getting the crowd back.

8 A Yes, sir.

9 Q Do you recall him pushing an individual,
10 specifically a lady with a dog?

11 A I do not remember it personally. I guess it came
12 up.

13 Q Okay.

14 A I think that question was asked to me in my
15 Internal Affairs question and answer.

16 Q Okay.

17 A But I don't remember it, no, sir.

18

19 MR. MILLS: Robby, have you had a chance to go over
20 this with him? Do you need to go over the
21 Q&A?

22 MR. GARFIELD: I would like to. Thank you.

23 MR. MILLS: Okay. Go. Sure.

24

25 (Short Break)

1

2 Q Deputy Fields, when we took a break awhile back you
3 had an opportunity to look over, for lack of better
4 term, I'll call it Q&A, question and answer, a two
5 page document from the Richland County Sheriff's
6 Department Internal Affairs.

7 Have you had an opportunity to review that?

8 A Yes, sir.

9 Q All right. And I think -- I can't even remember
10 where we stopped. I'm sorry. It's been a while.

11

12 COURT REPORTER: The last question was: Do you
13 recall him pushing an individual, specifically
14 a lady with a dog?

15

16 Q Okay. And I guess what brought that up was this,
17 is on the second page, the last couple of
18 questions.

19 A Yes, sir.

20 Q It was dealing with a black female holding a small
21 dog. You see that, the fourth question from the
22 bottom?

23 A Yes, sir.

24 Q All right. And asked -- I think the question was,
25 Did anyone else to threaten to put a black female

1 in jail in that immediate area. And you responded,
2 yes, I didn't; Deputy Clarke did.

3 And then the next question was, Did he push
4 her, and your answer was no. And then question was
5 are you sure. I know for a fact he did not.

6 **A Yes, sir.**

7 Q All right. Does that refresh your recollection
8 about whether he pushed an individual or not?

9 **A As far as did he push her is what you're asking me?**

10 Q Yeah. Right.

11 **A I mean, I did not see him. I did not see him push**
12 **her.**

13 Q Okay.

14 **A In that sense, no.**

15 Q Well, you said and for a fact you know he didn't
16 push her.

17 **A Yes, sir.**

18 Q And you were truthful at the time you gave that
19 statement, correct?

20

21 MR. GARFIELD: Object to the form. Go ahead.

22

23 Q Were you truthful at the time you gave that
24 statement?

25 **A I was truthful at the time I gave that statement.**

1 Q Thank you. All right.

2 Could you tell me a little bit about what
3 happened after you -- Well, I think when we left
4 it, you had gotten Ms. Martin on the ground.

5 A Yes, sir.

6 Q We had talked about that. And tell me what
7 happened after taking her to the ground.

8 A I handcuffed her up.

9 Q Okay. All right. And then what happened after
10 that? Did you have any problem handcuffing her
11 once she was on the ground?

12 A If I could refer back to my report.

13 Q Sure.

14 A According to my report, I did not once I got her on
15 the ground. It was not an issue.

16 Q Did you search her?

17 A I think we had a female. And, again, I don't have
18 this in the report, but I believe a female officer
19 would come and search her. We did have a female
20 officer there with us. So that's usually . . .

21 Q And who was that officer? I saw a list one time.
22 There was an Officer Goins there. Sandra Goins.
23 [sic]

24 A Yes. That would be here.

25 Q And I understand she arrived she arrived at some

1 point.

2 **A Yes, sir.**

3 **Q** So is it your belief or -- Let me see. Did you
4 ever personally search Tashiana Martin?

5 **A** I don't believe I did. Per policy we are allowed
6 to search females a certain way, but I don't recall
7 doing that. I believe -- And, again, I believe
8 Officer Goins did.

9 **Q** And that would be -- When you say a search, and
10 I'll just say for lack of better terms, search
11 incident arrest, we're talking about kind of either
12 like a Terry pat down outside type of thing,
13 correct?

14 **A** Yeah.

15 **Q** Just for -- Mainly looking for weapons --

16 **A** Well, when we actually arrest an individual, if I
17 was, like a male, for example, I mean, we go in
18 pockets, I mean, we get pretty personal, you know,
19 to make sure they don't have things on them.

20 **Q** Okay.

21 **A** And so with females, that's why we like for a
22 female to search the females because they get more
23 personal with them and things like that. It's just
24 a much safer way to operate.

25 **Q** But if a female's unavailable, you are authorized

1 to do that --

2 **A Yes.**

3 Q -- because it ultimately is someone under arrest
4 who you need to search to make sure there's no
5 contraband or weapons that can harm you or
6 themselves, is that fair?

7

8 MR. GARFIELD: Object to the form of the question.

9 Go ahead.

10

11 **A Yes, sir.**

12 Q Okay. What happened after you put the handcuffs on
13 Ms. Martin? What did you do with her?

14 **A I believe she was placed in a patrol car.**

15 Q All right. Did you have any conversation with her
16 during that time?

17 **A I don't believe. I don't believe so.**

18 Q Was she saying anything to you during that time?

19 **A I don't remember.**

20 Q Was she screaming and cussing and yelling? Was she
21 still carrying on?

22 **A She could have been. She was not in my patrol car,
23 so I don't really remember.**

24 Q I'm talking on the way to placing her in the patrol
25 car.

1 **A** I really don't remember.

2 **Q** Okay. There's been a discussion about the camera,
3 the cell phone camera. What's your memory of what
4 happened to that after she was placed under arrest?
5 I think when we looked in the report, there was a
6 question about Deputy Clarke trying to get hold of
7 the cell phone. Did you become aware of anything
8 that happened to the cell phone after you got Ms.
9 Martin under arrest?

10

11 MR. GARFIELD: Object to the form. Go ahead.

12

13 **A** I believe my supervisors on the scene at the time
14 handled all that. I may have stuck the phone into
15 evidence. And that's because of the pictures on
16 there. But as far as -- Again, of course, we
17 talked about, immediately after, what happened as
18 far as we discussed what happened out there and
19 things like that. So I knew about the cell phone.

20 **Q** Okay.

21 **A** As far as what was discussed between like her and
22 some other deputies. But as far as me discussing
23 dealing with the cell phone personally between her
24 and Mr. Martin and all that, I didn't have anything
25 to do with that.

1 Q Okay. So let me understand then. Did you ever --
2 After that event, did you ever handle the cell
3 phone yourself?

4 A I could have, but I really don't remember. There's
5 different chains of custody we would go through to
6 turn in evidence. We can take it ourselves or we
7 go through a chain of command.

8 Q Right.

9 A And that's always changing sometime, you know, per
10 policy. So at the time, it's very possible that I
11 could have stuck that into evidence.

12 Q I noticed on the last page of your incident report
13 it says cell phone was taken for evidence and put
14 in a RCSD drop box. Would that indicate that you
15 had taken it into evidence? I mean, would you put
16 that in there if you --

17 A That would indicate that I probably did. But it,
18 unfortunately, doesn't say for sure whether I did
19 or not.

20 Q But you noted it in your incident report and you're
21 documenting your actions at this point, correct?

22

23 MR. GARFIELD: Object to the form. Go ahead.

24

25 A I would think so, yes, sir.

1 Q Okay. So just following -- So, you don't recall
2 ever picking up the cell phone or looking at the
3 pictures?

4 A No, I know I ever looked at the pictures. The
5 first time I actually saw the pictures was actually
6 a couple days ago.

7 Q Okay.

8 A I mean, that's the first time I've seen the
9 pictures in four years or whatever.

10 Q So you never looked at the pictures at the scene?

11 A No, sir.

12 Q And you never handled the phone or did anything
13 along that line?

14 A No, sir.

15 Q Okay. Okay. And so the extent that you go it, you
16 took it -- who -- you don't remember who handed it
17 to you?

18 A I don't remember. And, again, I'm not even for
19 sure that I'm the one who put it into evidence.
20 I'm really not. I know it says it was in evidence
21 in my report, but I'm not 100 percent sure that I
22 stuck it in. But it's possible.

23 Q Right. And I've never seen the evidence bag, so
24 I'm kind of at a loss here myself. Shouldn't -- If
25 it is placed into evidence, isn't there a bag that

1 it's placed in, do y'all have those in your patrol
2 car?

3 **A** **Yeah. What we do -- Yes, sir. We have bags that**
4 **seal up and then once we put it in evidence,**
5 **whether if it's a situation where we have to put it**
6 **in a drop box or hand it to somebody.**

7 **Q** When you say seal up, we're not talking about a
8 ziplock bag; we're talking about something you
9 would have to break a seal to get back into, is
10 that right?

11 **A** **Yes, sir, you would.**

12 **Q** I mean, once it's put in there, you have to tear it
13 open to get it open?

14 **A** **That's correct. You have to cut it or tear it**
15 **open.**

16 **Q** What is the protocol once you put it in evidence?
17 How does one actually do that? Do you . . .

18 **A** **Yeah. What we would do is we would, whatever we're**
19 **putting into evidence, we'll take the cell phone,**
20 **for example, we put it into the bag, write all the**
21 **information about the case and things like that.**
22 **There's different things we have to fill out. Then**
23 **we drop it in the drop box or we would give it to**
24 **the evidence person, if they're there.**

25 **Q** In other words, if the evidence -- I'm sorry. I

1 didn't mean to interrupt.

2 **A Okay.**

3 **Q** If you drop it to the evidence, you're talking
4 about going to the custodian and saying here it is
5 and you fill out a form and that kind of stuff,
6 right?

7 **A Yeah. Well, we deal with the evidence. I mean,**
8 **we're the ones who put it in, make sure it's**
9 **sealed, all that kind of stuff.**

10 **Q** Do you do a paper document along with that, by any
11 chance?

12 **A On the evidence bag itself, there is a document on**
13 **there.**

14 **Q** Okay.

15 **A And then once we give it -- Once the evidence**
16 **person gets it, there's things they do with it.**

17 **Q** So do you mark like the time and date that you put
18 the thing into evidence?

19 **A Yes, sir.**

20 **Q** Do you mark where you retrieved it from or anything
21 else like that?

22 **A Yes, sir.**

23 **Q** All right. And you think that was done at the
24 scene, in this case?

25 **A We have an evidence room at headquarters, so it**

1 could have been taken to headquarters and the -- it
2 might have been filled out there. As far as where
3 it was filled out, I really don't know.

4 Q Okay.

5 A It could have been done at the scene.

6 Q Do I understand you to say that you did not have --
7 Well, let me ask you this. Did you have any other
8 contact with Tashiana Martin after her being placed
9 in, I think the records suggest, Officer Gore's
10 car?

11 A Okay. I don't remember. I really don't. Nothing
12 that I recall.

13 Q Do you remember anything that she said to you
14 during that time? Did she say anything to you?

15 A I really don't remember.

16

17 MR. MILLS: Deputy Fields, that's all the questions
18 I have for you at this time. Ms. Harrison may
19 ask you some questions and your attorney will
20 have an opportunity. I'm not going to promise
21 you I won't say anything again. Thank you.
22 Appreciate it.

23 MS. HARRISON: Robby, just for the record, I don't
24 know if I'm going to introduce these pictures
25 as evidence.

1 MR. GARFIELD: Okay.

2 MS. HARRISON: But these are pictures from Quail Run
3 Apartments showing like the kind of a sequence
4 of where we believe the cars were located. Do
5 you want to take an opportunity to look at
6 these pictures with your client?

7 MR. GARFIELD: Since I haven't even seen them, I
8 would like that opportunity.

9 MS. HARRISON: Yes. All right. Well, all right.

10 MR. GARFIELD: Yes. Thank you. Do you want to do
11 this now?

12 MS. HARRISON: Yeah. I wanted to just offer it up.

13 MR. GARFIELD: I appreciate that.

14 MS. HARRISON: But I haven't decided yet, but if you
15 want to, you know.

16 MR. GARFIELD: I appreciate that. This is only
17 several pictures. Should be very brief.
18 Thank you.

19

20 (Short Break)

21

22 EXAMINATION

23 BY MS. HARRISON:

24 Q My name's Erika Harrison and I represent Carlos
25 Martin in this case. So I wanted to make sure that

1 was clear for you as to who I was. And down the
2 way is Charles Bonner, and he's representing Mr.
3 Martin in this case. He's not been pro hoc'ed into
4 this case, but, yet, he's representing him. But it
5 will just be you and I this morning, all right.

6 Now, the first thing I want to go to is back
7 to your original statement you have in front of
8 you, the one that you prepared for Internal
9 Affairs, correct?

10 **A Yes, ma'am.**

11 **Q All right. Let's go to the last page of your**
12 statement. And I just want to get some things on
13 the record and make sure I'm absolutely clear as to
14 some of the things that occurred after you had
15 arrested Mr. Martin, all right.

16 **A Yes, ma'am.**

17 **Q Now, at the time when you had arrested Mr. Martin**
18 and which -- he was -- which vehicle was he in?
19 Was he in your patrol car?

20 **A I believe he was, yes.**

21 **Q So he was sitting in your patrol car. He was in**
22 the back seat?

23 **A I believe he was in mine, yeah.**

24 **Q And the door was open at the time?**

25 **A No, not if he was in the back seat. No, ma'am.**

1 **The door would not be open.**

2 Q So he wasn't sitting -- He wasn't -- So when he --
3 When you placed him -- Who placed him in your
4 patrol car?

5 A **Probably Deputy Smith did. Again, I don't know for**
6 **sure. But I think Deputy Smith because that's the**
7 **one who once we handcuffed him up, we got up and**
8 **Deputy Smith took control of him.**

9 Q So Deputy Smith placed him in the patrol car. Did
10 you over hear Mr. Martin say anything to you or to
11 any of the other deputies that were at the scene?

12 A **I mean, in reference to say anything at all?**

13 Q Say anything at all to you.

14 A **I mean, he was saying things. I don't know**
15 **verbatim what he was saying.**

16 Q Well, after you had taken control of him, arrested
17 him and had him handcuffed and sitting in the
18 patrol car, had he calmed down, to your knowledge?

19 A **He was calm, then he was irate and then he was calm**
20 **and he was irate. So it's kind of back and forth.**

21 Q Well, all right --

22 A **One minute he would be calm and the next minute he**
23 **would be at it again talking.**

24 Q Well, if he's at it again talking, what are the
25 things that's saying as he's talking?

1 **A** Let me refer to my report here. I have here in my
2 Internal Affairs statement that Mr. Martin
3 continued to run his mouth while in my patrol car
4 and laughing saying God was with him.

5 Q So he's -- He's continuing to run his mouth. What
6 is he saying?

7 **A** I don't know. I don't have that documented.

8 Q And the only thing that you recall was him saying
9 God was with him?

10 **A** That's what I have in my statement, yes, ma'am.

11 Q And that's all you actually can recall at this time
12 and that's all you could recall on the day that you
13 wrote this statement?

14 **A** I believe so.

15 Q Now, you engage Mr. Martin while you are in the
16 patrol car, is that correct?

17 **A** While I'm in -- I'm sorry?

18 Q While you're in the patrol car --

19 **A** While he's in the patrol car.

20 Q While he's in the patrol car and you're in the
21 patrol car, do you engage Mr. Martin further?

22 **A** I was not in the patrol car at the same time he was
23 in the patrol car, I don't believe.

24 Q All right. So did you ever make a statement to the
25 effect that you are glad that Johnnie Cochran is

1 dead?

2 **A I did make that statement.**

3 Q You did make that statement?

4 **A Yes, ma'am.**

5 Q And you made that statement directly to Mr. Martin?

6 And you're referring back to your IA?

7 **A Yeah. My question and answer from IA, that's**
8 **correct.**

9 Q There's nothing to dispute about the fact that you
10 made the statement, is that correct?

11 **A That's correct.**

12 Q And are you glad that Johnnie Cochran is dead?

13

14 MR. GARFIELD: Object to the form. Go ahead.

15

16 **A No, ma'am.**

17 Q So what was the intent behind the statement?

18 **A At the time I made the statement, Mr. Martin,**
19 **according to my -- again, according to my question**
20 **and answer here, was talking about getting Jack**
21 **Swerling and -- who is a good defense attorney.**
22 **And we all know who Johnnie Cochran is. He's a**
23 **very popular defense attorney. And I made the**
24 **statement.**

25 Q And you made the statement --

1

2

MR. GARFIELD: Were you through with your answer?

3

I'm sorry, Erika.

4

5

A Yeah, I'm through with my answer.

6

7

MR. GARFIELD: Okay. Thank you.

8

MS. HARRISON: You're through with the answer.

9

10 Q

And you made the statement that you're glad that
Johnnie Cochran is dead.

11

12

A Because they might get him if he was not.

13

Q They might get him if he was not.

14

A Uh-huh.

15

Q And so that was it? That's all -- Your whole

16

intent behind that was saying that, essentially,

17

too bad he's dead because you could get him?

18

A The intent behind was that as well as we all know

19

who Johnnie Cochran is. He's a good defense

20

attorney. Mr. Martin was talking defense lawyers

21

at the time. He was talking about Jack Swerling at

22

the time. And so I made that statement. And

23

because we all know who Johnnie Cochran is.

24

Q Is that a professional statement to make to a

25

subject?

1 **A** **No, ma'am.**

2 **Q** All right. So when -- Let's drop back down here to
3 the last paragraph right here. You said, "The
4 situation was handled as professional as possible
5 because of my training and patience the only people
6 injured was Deputy Clarke and myself, and that was
7 because of the concrete that we cut our hands on."

8 Now, there's a lot in that sentence, a lot of
9 different things going on. But you would agree
10 with me that in that instance, you did not handle
11 Mr. Martin professionally when you said to him --

12 **A** **Well, I'm not even sure**

13 **Q** -- you are glad that --

14

15 MR. GARFIELD: Let her finish her question.

16

17 **Q** -- Johnnie Cochran is dead.

18 **A** **I'm not even sure I was talking to Mr. Martin at**
19 **the time when I made that statement.**

20 **Q** Well, then who were you talking to?

21 **A** **The other deputies in the area.**

22 **Q** So let me -- Let's back up now because now I'm a
23 little confused as to what you're -- how this all
24 comes about. Mr. Martin is saying what about
25 attorneys?

1 **A** Again, as I remember it, is he was talking about in
2 reference to getting attorney Jack Swerling, okay,
3 who we know who that is as well. And then I made a
4 comment, because we were on the back of the hood or
5 the trunk doing paperwork, and I made a comment
6 with other deputies -- to other deputies about
7 Johnnie Cochran.

8 **Q** The comment that you specifically made was you're
9 glad that Johnnie Cochran is dead.

10

11 MR. GARFIELD: Object to the form. Asked and
12 answered. Go ahead.

13

14 **A** I said that, yes.

15 **Q** No, I mean, that was -- My question was, though,
16 the comment that you made directly to these
17 deputies was you're glad that Johnnie Cochran is
18 dead.

19 **A** Correct.

20 **Q** And who are these two deputies that you made the
21 statement to?

22 **A** Well, there was a lot of deputies out there, so I
23 don't recall.

24 **Q** Well, I agree with you that there a number of
25 deputies out there at the time. But that became a

1 statement that you made to two deputies that you
2 said that you made to two deputies.

3 **A** No, I said to deputies at the -- If I said two then
4 what I'm saying is there was a lot of deputies out
5 there. To -- I said -- I'm sorry. I made to
6 deputies; not two deputies. I didn't mean two the
7 number two. I said to deputies.

8 **Q** So what deputies were -- So you were at the back of
9 your car -- Let me -- I'm just trying to understand
10 exactly how this comment came about.

11 **A** Okay.

12 **Q** You're at the back of your car; you're filling out
13 paperwork, right? That's yes?

14 **A** Yes, ma'am.

15 **Q** Yes. Right. So you're filling out the paperwork
16 and who's assisting you with the paperwork at the
17 time?

18 **A** Several officers. I don't remember all who was
19 back there. We had a couple.

20 **Q** Couple, several? Couple is two; several is more
21 than two.

22 **A** Well, we had a --

23

24 MR. GARFIELD: Is that question? Or you just
25 telling him.

1

2 Q I just want to know was it two or more than two?

3

4 MR. GARFIELD: Thank you.

5

6 A It was definitely more than two.

7 Q And you overhear Mr. Martin and then this comment,
8 then you make your comment about Johnnie Cochran
9 being dead?

10 A That's correct.

11 Q All right. Now, after that comment that you made
12 to these deputies about Johnnie Cochran, you are
13 glad that Johnnie Cochran is dead, did you make any
14 other comments in reference to Mr. Martin or to Mr.
15 Martin?

16 A I could have.

17 Q Well, --

18 A I'm not sure.

19 Q Did you?

20 A I'm not sure. Are you referring to something
21 specifically?

22 Q Well, I mean, you've had an opportunity to read all
23 your statements, right?

24 A Right.

25 Q All right. So you've had a time to talk this out

1 and to recall all the events of that incident,
2 right?

3 **A All the events as best to my knowledge.**

4 Q Right. All right. So let's drop down to your
5 statement on the last paragraph in the last page.
6 It says, "I did reply you're going to need a good
7 lawyer because your career is pretty much over."
8 Did you make that statement to Mr. Martin?

9 **A Where are you raftering to?**

10 Q I'm referring to the second page, last paragraph --
11 the large block paragraph before the last one, the
12 last line.

13 **A Okay. I was answering in the sense that Mr.**
14 **Martin, after he was being switched to the paddy**
15 **wagon saying he has a good lawyer, he's not worried**
16 **about anything and how he will get off the charges.**
17 **And I did reply you're going to need a good because**
18 **your career is pretty much over. So yeah, that was**
19 **a rebuttal to something that he had said to me.**
20 **That's correct.**

21 Q So you're continuing to engage Mr. Martin after
22 he's been in handcuffs, after you're about to put
23 him on the paddy wagon, and you're still continuing
24 to engage Mr. Martin, is that correct?

25

1 MR. GARFIELD: Object to the form question. Go
2 ahead.

3
4 **A I think we were talking back and forth.**

5 Q So at that time that you make this comment that
6 your career is pretty much over, is that a
7 professional comment to make to this person?

8
9 MR. GARFIELD: Object to the form. Go ahead.

10

11 **A I was letting him know he was in the military and**
12 **his actions were uncalled for and the military**
13 **doesn't put up with that kind of stuff. So I was**
14 **letting him know that if convicted, he was going to**
15 **be in some trouble, yeah. Absolutely.**

16 Q So you're letting him know if he's convicted, it's
17 that he could be in trouble. But this doesn't say
18 any -- "if" is a conditional word, right? Would
19 you agree with me "if" is a conditional word?

20 **A It could be. I don't know.**

21 Q Well, let's just say, for instance, "if" is a
22 condition. So if something happens, this could
23 happen, right?

24 **A Correct.**

25 Q All right. So you would agree so that's how that

1 sentence would work. So if you are convicted, your
2 career is over. So the end result is the career
3 could be over if he's convicted, right?

4

5 MR. GARFIELD: Object to the form. Go ahead.

6

7 **A Could be.**

8 Q Does that sentence imply a condition that if he's
9 convicted, his career is over?

10

11 MR. GARFIELD: Same objection.

12

13 **A No. But, again, I was -- after what he had said, I**
14 **was speaking back to him.**

15 Q At this time, are you making an affirmative
16 statement to him that his career is pretty much
17 over?

18

19 MR. GARFIELD: Same objection. Go ahead.

20

21 **A I mean, it's clear I said it. It's in my**
22 **statement.**

23 Q So, yes, you made the affirmative statement that
24 his career was pretty much over at the time that
25 you were placing him in the paddy wagon?

1 **A** **I made the statement to him.**

2

3 MR. GARFIELD: Same objection.

4 MS. HARRISON: He was answering and then you were
5 objecting.

6

7 **Q** So I want the record to be clear that are you --
8 you're answering yes to my question?

9 **A** **No. I said I made the statement.**

10 **Q** You made the statement.

11 **A** **I made the statement. You're going to need a good**
12 **lawyer because your career is pretty much over, I**
13 **made that statement, yes.**

14 **Q** Let's travel back to this very beginning of this
15 day on October 24, 2005. You're dispatched out
16 there, right?

17 **A** **Correct.**

18 **Q** To Quail Run.

19 **A** **Correct.**

20 **Q** Now, you're out there for the -- What's the purpose
21 of you being out there?

22 **A** **I was dispatched to the location in reference to a**
23 **suspicious person hanging around.**

24 **Q** Do you recall what that description of that
25 suspicious person was?

1 **A** **I do not.**

2 **Q** So you don't know if the call was for a suspicious
3 white male?

4 **A** **I don't know what the suspicious -- what the**
5 **description was of the suspicious person. I don't**
6 **recall.**

7 **Q** Is there any type of recording of that or the
8 dispatch call on that, do you know?

9 **A** **I believe so, yes.**

10 **Q** And that description would have been in that
11 dispatch call, probably?

12 **A** **It could have been. It might not have been.**
13 **Sometimes we get descriptions; sometimes we don't.**

14 **Q** So how --

15 **A** **If somebody calls a suspicious person in and we**
16 **might get description, a very detailed description,**
17 **we might not get a description at all.**

18 **Q** So it could just be just a person . . .

19 **A** **Yeah. And they're hanging out by a certain place**
20 **or something like that.**

21 **Q** All right. So where were you at the time prior to
22 coming over to Quail Run, do you know?

23 **A** **I have no idea.**

24 **Q** So you arrive at Quail Run. What's -- You enter
25 the complex and where do you start traveling? Do

1 you -- are you familiar with the Quail Run
2 apartment area?

3

4 MR. GARFIELD: Object to the form. Go ahead.

5

6 **A Yes, somewhat. Yeah.**

7 Q You are familiar with that area before?

8 **A Uh-huh.**

9

10 MR. GARFIELD: Hold on. Is that a yes?

11

12 **A Yes.**

13 Q And have you reported to the Quail Run apartment
14 complex before?

15 **A I have.**

16 Q Have you reported back to the Quail Run apartments
17 after this incident?

18 **A I'm sure I have.**

19 Q So you're familiar with somewhat the layout of the
20 Quail Run apartment complex?

21 **A For the most part, yeah.**

22 Q So you go into the Quail Run apartment complex and
23 do you just started traveling around or do you go
24 to a specific area?

25 **A Just driving around.**

1 Q You're just driving around. How long do you think
2 you've been driving around in the Quail Run
3 apartments?

4 A I don't remember.

5 Q Now, you start driving around this area looking for
6 this particular suspicious person and then all of a
7 sudden you hear some loud music, is that right?

8 A Correct.

9 Q All right. So the loud music distracts you from
10 the intended purpose of you actually being there?

11 A No.

12 Q So tell me exactly why you stopped looking for the
13 suspicious person and then switched over to the
14 loud music, identifying where the loud music was
15 coming from.

16 A Ask the question one more time.

17

18 MS. HARRISON: What was my question?

19 COURT REPORTER: So tell me exactly why you stopped
20 looking for the suspicious person and then
21 switched over to the loud music, identifying
22 where the loud music was coming from.

23

24 Q So, again, what made you stop looking for -- Was
25 the loud music the reason why you stopped looking

1 for the suspicious person?

2 **A** No. My job is to enforce the law, no matter what
3 that is; no matter where I'm at. So the loud music
4 was obviously a noise ordinance, breaking the law.
5 So I don't think I -- I don't think it was about me
6 stopping looking for the suspicious person. That
7 never really crossed my mind. I just knew that I
8 heard loud music coming from somewhere and I needed
9 to deal with that at that in point in time.

10 **Q** You needed to deal with the loud music -- The loud
11 music is a misdemeanor, correct? It's a city --
12 It's a county ordinance?

13 **A** That's correct.

14 **Q** And the suspicious person, though, even though you
15 don't what the suspicious person might be doing,
16 they could be doing a felony, right? I mean,
17 that's possible?

18 **A** I don't know. I don't know.

19 **Q** But is it possible?

20 **A** It's possible that the person with the loud music
21 may be doing a felony. I don't know.

22 **Q** Well, at the time, though, --

23

24 MR. GARFIELD: Was that funny, Chris?

25 MR. MILLS: That was hilarious. It was a joke. I

1 really didn't realize it was -- that really
2 was funny in my mind, thanks.

3 MR. GARFIELD: Okay.

4 MR. BONNER: I'm sorry. I'm just laughing because
5 you're laughed, Chris.

6
7 Q Well, going back to what I was originally asking.
8 A person breaking a misdemeanor county ordinance
9 versus a suspicious person who you don't know what
10 they're doing, did that take priority?

11 A **At the time, yes.**

12 Q And a suspicious person who could have possibly be
13 committing a felony took priority, was actually --
14 Excuse me. Strike that question.

15 A county ordinance noise disturbance took
16 priority over the search of a suspicious person who
17 could be committing a possible felony?

18

19 MR. GARFIELD: Object to the form. Go ahead.

20

21 A **I had no reason to call -- If I had a reason to**
22 **think that suspicious person was committing a**
23 **felony or that's how the call went out, then**
24 **obviously there is priority calls that we take,**
25 **okay, if that's you're getting at.**

1 Q Uh-huh.

2 A I had no reason to think the suspicious person was
3 doing that. I had driven around the apartment
4 complex, all right. I had checked the scene out.
5 I didn't see the suspicious person, which is a very
6 normal -- a very normal thing. We get calls about
7 suspicious people all the time. Sometimes you
8 discover them. Sometimes you do; sometimes you
9 don't. And at that point in time when I was
10 finishing up the suspicious person call is when the
11 loud music situation came upon me. And I had no
12 reason to think the suspicious person was
13 committing a felony because that's not how the call
14 went out.

15 Q So loud music comes upon you.

16 A Uh-huh.

17 Q All right. And you're in the complex. Are you
18 driving -- You're driving around, right?

19 A In the complex?

20 Q Uh-huh. You're driving around.

21 A At that -- Okay. When I heard the loud music, I
22 had stopped my patrol car trying to figure out
23 where this music was coming from at the time.

24 Q So how long did you stop your patrol car to
25 determine?

1 **A** **Let's see. I'm going to refer back to my report.**
2 **It looks like it says after about a minute or so is**
3 **when I saw the white Ford Explorer that was playing**
4 **the loud music.**

5 **Q** So about a minute. So are we -- If I was to sit
6 here for one minute just stopped, no noise, is --
7 Let's just time that. Just for one minute.

8
9 MR. GARFIELD: I got you.

10 MS. HARRISON: All right. Let's just stop for one
11 minute.

12 MR. GARFIELD: We'll start right now.

13 (Period of silence taken)

14 MR. GARFIELD: It's 30 seconds, if you're
15 interested.

16 MS. HARRISON: We'll stop at 50 seconds because he
17 said about a minute.

18 MR. GARFIELD: However you like. Now 50 seconds.

19

20 **Q** All right. So for that amount of time, you waited
21 to determine where the loud music was coming from?

22 **A** **According to my report, yes.**

23 **Q** Fifty seconds. And that was -- That's a good bit
24 of time, right?

25 **A** **I guess. I mean, it can be.**

1 Q For loud music.

2 A I mean, --

3

4 MR. GARFIELD: Object to the form. Go ahead.

5

6 A I've been in apartment complex where it might take
7 you a couple of minutes sometimes to find where the
8 loud music is coming from. That's very possible.

9 Q No one called to ask you -- No one called or said I
10 have a loud music disturbance in Quail Run, did
11 they?

12 A Huh-uh. No, ma'am.

13 Q So you sat out in Quail Run for almost a minute
14 listening for a thumping bass sound, right?

15

16 MR. GARFIELD: Object to the form. Go ahead.

17

18 A I was listening for where the extremely loud music
19 that I heard was coming from.

20 Q Extremely loud music.

21 A Yeah.

22 Q All right. Was it thumping bass?

23 A Yeah, it's usually what we deal with, yes.

24 Q And you were trying to figure out -- It could have
25 been coming from the street that runs in front of

1 Quail Run, is that right?

2 **A** It could have been coming from the apartment, it
3 could have been coming from a lot of places.
4 **That's correct.**

5 **Q** So you couldn't determine exactly the location of
6 where this thumping bass sound was?

7 **A** **That's correct.**

8 **Q** So at that moment in time, after that about 50
9 second period as you're waiting for loud music, do
10 you see Mr. Martin?

11 **A** **White Ford Explorer -- Let me see here. Came**
12 **driving around the corner playing extremely loud**
13 **music.**

14 **Q** What type of extremely loud music?

15 **A** **I know the bass was thumping. Just what you said.**
16 **I mean, it was loud thumping bass music. I mean,**
17 **that could be a variety of music.**

18 **Q** Now, tell me about the county ordinance a little
19 bit. And just a little education on that for me.
20 Is your determination of what is extremely loud
21 subjective?

22 **A** **Yeah.**

23 **Q** And what do you base extremely loud on?

24 **A** **If it -- I mean, if it's disruptive to the**
25 **community in any way, shape or form or could be**

1 **disruptive to the community.**

2 Q Or could be, okay. So was this thumping bass
3 rattling the windows in your patrol car?

4 A **Rattling my windows?**

5 Q Yeah.

6 A **Typically my -- windows that rattle are windows**
7 **that are loose. It wasn't rattling my windows.**

8 Q Could you feel the thumping bass?

9 A **I could.**

10 Q So you felt thumping base, okay.

11 A **I could.**

12 Q So you could -- So not only you hear it, you could
13 feel it. So what level is thumping bass at if you
14 can actually feel it while sitting in your car for
15 50 seconds?

16 A **I don't understand the question.**

17 Q Well, I mean, do you know what the levels are? I
18 mean, what's -- I mean, do you know what decibels
19 are?

20 A **Yeah, I know what decibels are, but I don't what**
21 **level it was at, if that's what you're asking.**

22 Q Now, was this thumping bass sound, you heard it,
23 but, you know, as you -- and, you know, -- And I
24 need to pontificate a little bit about this.

25 As you hear sounds in cars, cars are

1 traveling, they're moving. So tell me about this
2 thumping bass sound. How -- Was it traveling? Did
3 it increase? Did it decrease? Tell me about it.

4 **A Well, it increased as it got closer to me.**

5 **Q** It increased, okay.

6 **A Yeah.**

7 **Q** And so at what intervals did it start to increase?
8 Because we've got 50 seconds on the record now, so
9 what intervals did it start to increase?

10 **A I'm not sure.**

11 **Q** Did it start to increase every five seconds?

12 **A I don't remember.**

13 **Q** Ten seconds?

14 **A I don't remember.**

15 **Q** So it's increasing but you don't know the graduated
16 level at which it was increasing when the car --
17 when you finally determined that it was Mr. Martin?

18 **A No, ma'am.**

19 **Q** Now, you said -- I'm going to just actually pull
20 out a piece of paper. Like we've agreed that
21 you're somewhat familiar with the Quail Run
22 complex, right?

23 **A I am.**

24 **Q** So is it fair to say that you can possibly do a
25 diagram of where you were at the time that you saw

1 Mr. Martin's car?

2 **A No, ma'am.**

3 **Q** You can't?

4 **A I don't recall. This -- What's the date on this?**
5 **'05?**

6 **Q** Uh-huh.

7 **A Yeah. I'm not -- I don't feel comfortable doing**
8 **that.**

9 **Q** You don't feel comfortable doing the diagram of
10 where you were stationed at at the time that Mr.
11 Martin -- when you saw Mr. Martin?

12 **A I can't be sure. So, therefore, I can't.**

13 **Q** Okay. Now, obviously, you have had a ton of
14 arrests since -- well, we won't say ton because ton
15 is a measurement. You've had a number of arrests
16 since October 24, 2005. So I will agree with you,
17 you've had -- That's correct, right, you've made
18 several arrests since then?

19

20 MR. GARFIELD: Object to the form. Go ahead.

21

22 **Q** Have you made several arrests since October 24,
23 2005?

24 **A Yes, ma'am.**

25 **Q** All right. In particular, this -- does this event

1 on October 24, 2005, does this strike you as a
2 significant event or a non-significant event?

3 **A It's one in many events that I've encountered over**
4 **what I think is now a long period of time. So not**
5 **really significant to me, no.**

6 Q Okay. So this event, which you've actually been
7 served with a Complaint, a Summons and Complaint
8 with, isn't as significant as some of your other
9 arrests in which you've not been served Summons and
10 Complaints?

11
12 MR. GARFIELD: Object to the form. Go ahead.

13
14 **A I mean, I've looked over the paperwork a lot more**
15 **because I've had to because of the situation. But**
16 **as far as me remembering certain details about that**
17 **day, where cars were placed, drawing diagrams,**
18 **things like that, I mean, I can't be sure about**
19 **those things.**

20 Q All right. So would it be fair to say you can't be
21 sure about what was said to -- what you said to Mr.
22 Martin?

23 **A Well, what I have written down is what I can refer**
24 **to.**

25 Q So the only thing that you can actually recall and

1 the only thing that you're going hold yourself to
2 in this deposition is what you stated in this
3 report that you've written, correct?

4

5 MR. GARFIELD: Object to the form.

6

7 **A Correct. I can refer to my internal affairs, my**
8 **statement, question and answer as well as my police**
9 **report.**

10 Q And also your trial transcript.

11 **A Trial transcript.**

12 Q And that's it?

13

14 MR. GARFIELD: Object to the form.

15

16 Q As far as your ability to recall anything outside
17 of those documents?

18 **A I mean, if you ask me a question that I know the**
19 **answer to, then, certainly, I'll answer it. But if**
20 **I don't remember, I don't know or I can't be sure,**
21 **then I can only refer to this and see what that**
22 **says.**

23 Q All right. So you're unable to tell me where
24 exactly you were stopped when you saw Mr. Martin's
25 car?

1

2 MR. GARFIELD: Object to the form.

3

4 A I mean, I was stopped in the complex is all I can
5 tell you. Exactly where, I don't remember.

6 Q Are you able to tell me exactly how far away you
7 were from Mr. Martin when you approached him?

8 A Let's see what's in my report here. So are you
9 referring to when he got out of his car?

10 Q I'm just referring in general. I mean, out of all
11 these reports, do any of these reports tell you, or
12 can you recall personally, how far you were from
13 Mr. Martin when you approached him?

14 A No. But in my question and answer, I know when I
15 approached him he was walking very fast away from
16 his vehicle, so I had to get his attention quickly.
17 That's all I know.

18 Q Are you going to be able to tell me what type of ID
19 he presented to you?

20 A I think that is written somewhere.

21 Q Actually, let me strike that question. Are you
22 going to be able to recall what type of ID he
23 presented to you if you are shown the type of ID's
24 he might have presented to you?

25

1 MR. GARFIELD: Object to the form.

2

3 A No. But I do have it written down here, I believe
4 somewhere. I believe somewhere he presented me a
5 military ID.

6 Q Are you going to be able to recall the maneuvers
7 that you made in order to take Mr. Martin under
8 control and attempt to arrest him at the time?

9 A If I look at my use of force, absolutely.

10 Q Are you going to be able to recall exactly what you
11 said to Mr. Martin when you were on top of him with
12 your -- with his knee in your -- in the small of
13 your back?

14

15 MR. GARFIELD: Object to the form.

16

17 Q In the small of his back?

18

19 MR. GARFIELD: Same objection. Go ahead.

20

21 A If it's written down, ma'am, I'm sure I can. I
22 mean, I don't remember what was said to him when I
23 was on top of him. But if I have it written down,
24 yes, I can refer to it.

25 Q All right. I just wanted to make sure what you

1 have in the scope of your personal knowledge versus
2 what you have in written down. And so I just want
3 to make sure if there are some things that I might
4 ask you that you might not be able to recall
5 because it's not in front of you or you just don't
6 have personal knowledge.

7 **A Some things I'll be able to recall; some things I**
8 **may not. Some things I'll have to refer to my**
9 **notes.**

10 **Q All right. Well, let's just go back up. Now,**
11 wherever you were stopped in Quail Run that you
12 don't recall exactly specifically, perhaps you can
13 recall for me how it was that you were able to see
14 Mr. Martin bobbing his head up and down. What was
15 the positioning of your vehicle? Were you facing
16 Mr. Martin? Was he t-bone to you? How was -- What
17 was the positioning for you to be able to see him
18 bobbing his head up and down?

19 **A I was positioned as to go out of the complex, so I**
20 **was facing -- Again, I mean, it's one thing where**
21 **he was coming this way; I'm going this way. So my**
22 **car's stopped here, so I'm facing this way and he's**
23 **coming this way. And as he passes my car, I know**
24 **he's bobbing his head up and down.**

25 **Q So he's approaching you. You are approaching him -**

1 -

2 **A No, I'm stopped.**

3 Q Huh?

4 **A I'm stopped at that point. I'm just trying --**

5 Q You're stopped --

6 **A -- make it clear which way I'm facing. That's all.**

7 Q You're stopped and he's approaching you?

8 **A Correct.**

9 Q All right. Are y'all actually in the -- y'all are
10 on the same road?

11 **A It's not a road. It was a parking lot.**

12 Q All right. Are there parking spots in between the
13 two of you?

14 **A I don't recall.**

15 Q This photograph that I -- I think they're with me.
16 Yeah, they are with me. I'm going to show you a
17 photograph, and I will tell you that this is the
18 white Ford Explorer that you saw and the BMW is
19 going to be representative of your vehicle, okay?

20 **A Okay.**

21 Q All right. I know that patrol cars are not BMW's,
22 so. I understand that. But the white Ford
23 Explorer is the Ford Explorer that you saw.

24

25 MR. GARFIELD: And I'm going to object to the form,

1 and specifically the characterization of the
2 representations that you made preceding to
3 this question.

4 MS. HARRISON: About a BMW is not a patrol car?

5 MR. GARFIELD: That's all I'll say. I don't want to
6 suggest an answer. So I'll just go ahead and
7 put that down.

8 MS. HARRISON: Okay.

9 MR. GARFIELD: I mean, I could tell you or I can
10 shut up. But I just -- didn't want to suggest
11 an answer to him, but I want to put on the
12 record that I object.

13 MS. HARRISON: Well, what's the -- I guess I'm
14 trying to understand what your objection is.
15 Are you objecting to the photograph or are you
16 objecting -- What the objection is?

17 MR. GARFIELD: Your characterization of what he saw
18 in the photograph. I think you said that I
19 would represent to you that this is the car he
20 saw and these were these positions. I object
21 to the characterization. But the question
22 itself, to the form.

23 MS. HARRISON: Okay.

24 MR. GARFIELD: Thank you.

25

1 Q Well, I'm going to show you a photograph. I'm
2 going to show you a photograph. Is this the white
3 Ford Explorer that you saw on the day of October
4 24, 2005?

5 A I don't know.

6 Q You don't know. Did you -- But you would agree
7 with me you saw a white Ford Explorer.

8 A That's correct.

9 Q All right. Is this the vicinity or the distance
10 between your patrol car, and I'll represent to you
11 there's the BMW right there. That is
12 representative of your patrol car. And this is the
13 white Ford Explorer. Is this representative of the
14 distance between you and Mr. Martin at the time
15 that you saw him bobbing his head up and down?

16

17 MR. GARFIELD: Object to the form. Go ahead.

18

19 A No, ma'am.

20 Q All right. Tell me what's not correct about that
21 photograph?

22 A First of all, the angles aren't even right. I
23 mean, -- So you're just asking the distance,
24 correct?

25 Q Right.

1 **A** Okay. He would need to be -- I mean, he was almost
2 on top of me. That's --

3 **Q** All right. So in between here are parking spaces.
4 I'll represent --

5 **A** Yeah, there was no parking space between us.

6 **Q** All right. So is it a single roadway?

7 **A** It's tough to even try to describe it. But the
8 point is, is that he was about this close to my
9 car.

10 **Q** So what's this close?

11 **A** I mean, we're talking, you know, two, three feet.
12 We're talking very close. Very close.

13 **Q** So he would be about the distance that one would be
14 if there was, you know, the little dashed lines or
15 a solid line --

16 **A** He wasn't even that far from me. He was very
17 close. I mean, I don't have a ruler. I can't
18 measure it out. But I'm telling you, he's very
19 close. You say what's very close? I mean, that's
20 tough to say, but he was very close.

21 **Q** Okay. So he's very close to you. So you see him;
22 he sees you. As you state, you made eye contact
23 with him. Did you make eye contact with him?

24 **A** Let me look here. In my report it says he looked
25 at me. As far as eye contact, I don't see that

1 **anywhere, unless it's in my Internal Affairs**
2 **statement.**

3 Q Well, let's just --

4

5 MR. GARFIELD: Erika, can I just ask for the
6 deponent to take his time if he's --

7 MS. HARRISON: Absolutely.

8 MR. GARFIELD: Thank you.

9 MS. HARRISON: Absolutely.

10

11 **A Yeah. I have nowhere that he made eye contact with**
12 **me.**

13

14 MR. GARFIELD: Go ahead. Keep going.

15

16 **A All I have is that he looked at me.**

17 Q He looked at you.

18 **A Yeah.**

19 Q All right. And you also say he doesn't turn off
20 his music. At that time, had you indicated to him
21 -- In your report it says and did not turn off his
22 -- turn his music off. Excuse me. That's not -- I
23 misstated what your statement said. Did not turn
24 his music off. At that time, had you at any point
25 in time indicated to him to turn off his music?

1 **A** No, because at that point in time, he drove past
2 me, I had to turn my patrol car around to make
3 contact with him.

4 **Q** And when he bobbed his head up and down, did you
5 think he was taunting you?

6 **A** I think it's a form of taunting, sure.

7 **Q** All right. Well, tell me what you -- Define
8 taunting for me.

9 **A** I mean, it could be. I can't --

10 **Q** That was --

11 **A** I can't define it for you, but it could be
12 taunting, yes.

13 **Q** Well, what do you mean you can't define taunting
14 for me? I mean, it's your words, right?

15

16 MR. GARFIELD: Object to the form.

17

18 **Q** Did you consider Mr. Martin taunting you?

19 **A** Yes.

20 **Q** Define for me what taunting means to you.

21

22 MR. GARFIELD: Object to the form.

23 MS. HARRISON: What's the objection? It's based on?

24 MR. GARFIELD: I don't have to tell you.

25 MR. MILLS: You do have to make an objection in good

1 faith, Robby.

2 MR. GARFIELD: It's a good faith objection, Chris.

3 I don't have to state the grounds. She can
4 elect to cure the question or not.

5

6 **A** I think taunting to me is just when you know you're
7 doing something you shouldn't do and you're just
8 kind of rubbing it in type deal.

9 **Q** All right.

10 **A** Saying, you know, I dare you. You know, I'm going
11 to get away with this type thing. That's what
12 taunting is to me in that particular situation.
13 And I can give you other examples, too. That
14 particular situation, that's what I thought about.

15 **Q** How many times did Mr. Martin bob his head up and
16 down?

17 **A** I don't remember.

18 **Q** So you don't know if it was one bob, two bobs,
19 three bobs? Could he possibly have been bobbing to
20 the music?

21 **A** My guess would be that's probably what he was
22 bobbing his head to.

23 **Q** So he's bobbing his head to the music, but --

24 **A** While he looked straight at my patrol car.

25 **Q** He looked at your patrol car.

1 **A** **Or looked at me in the patrol car.**

2 **Q** All right. If someone looks at you while you're in
3 your patrol car while bobbing their head up and
4 down to music that they're listening to, you
5 considered that to be taunting?

6 **A** **When it's excessively loud, extremely loud,**
7 **excessively loud.**

8 **Q** Did Mr. Martin know that it was excessively loud at
9 the time that he looked at you?

10

11 MR. GARFIELD: Object to the form question.

12

13 **A** **I don't know. I can't answer that.**

14 **Q** In your opinion, it was -- And, actually, you
15 didn't use excessively loud. You used extremely
16 loud.

17 **A** **Extremely loud.**

18 **Q** All right. Just make sure I was correct on what
19 loud was to you.

20 **A** **Yes, ma'am.**

21 **Q** You hadn't indicated to him that his music was
22 loud. You hadn't indicated to him that his music
23 was loud. He might have been bobbing his head up
24 and down to the music that he was playing. And he
25 looked at you. And that -- And those are the only

1 actions -- those are the only things that you knew
2 were occurring at that particular time?

3

4 MR. GARFIELD: Object to the form. Go ahead.

5

6 **A That's why I turned my patrol car around to let him**
7 **know that his music was extremely loud.**

8 Q All right. Were there any other people that were
9 in the vicinity of the complex that might have been
10 standing outside of the complex?

11 **A I didn't see anybody.**

12 Q Did anybody -- And we've already established that
13 no one called in complaining about loud noise.

14 **A Correct.**

15 Q And you had an opportunity to look at some of the
16 paperwork in this case, correct?

17 **A Yes, ma'am.**

18 Q Not only just your statements, but you've -- have
19 you looked at other statements in this case?

20 **A A couple, yeah.**

21 Q Was the music loud enough that anyone standing
22 outside could have heard it?

23 **A Yes.**

24 Q How far away if someone was standing -- How far
25 away could that music have been heard?

1

2 MR. GARFIELD: Object to the form.

3

4 **A I don't know.**

5 Q So you don't know if someone was standing 50 feet
6 away from Mr. Martin's car could -- if they could
7 have heard it?

8

9 MR. GARFIELD: Same objection.

10

11 **A Could have.**

12 Q If they were standing ten feet away, you don't know
13 if they could have heard it?

14 **A Again, I don't know.**

15 Q And we're just going back to what you've actually
16 stated. We sat here for 50 seconds, right?

17 **A Uh-huh.**

18 Q And you talked about a loud thumping basing sound
19 that was gradually increasing as it was approaching
20 you.

21 **A Yes.**

22 Q And you're nodding in agreement --

23 **A Correct.**

24 Q -- to what I represent your testimony was.

25 **A Yes, ma'am.**

1 Q But you can't tell me how far away you think
2 someone could hear the loud music if they were
3 standing ten feet away, whether or not they could
4 hear it if they were standing ten feet away?

5 A I mean, I can't say what somebody else would hear
6 or wouldn't hear. I don't know what else to say.

7 Q A person with normal hearing like normal hearing
8 just like you and I, could they have heard that
9 music standing ten feet away from his vehicle?

10

11 MR. GARFIELD: Object to the form.

12

13 A I would think so, yeah.

14 Q All right. Could they have had heard it if they
15 were standing 20 feet away?

16

17 MR. GARFIELD: Same objection. Go ahead.

18

19 A Again, I would think so, yeah.

20 Q Thirty feet?

21

22 MR. GARFIELD: Same objection.

23

24 A I would think so.

25 Q Forty feet?

1

2 MR. GARFIELD: Same objection.

3

4 **A It's possible.**

5 Q Sitting in their car?

6 **A Yes.**

7

8 MR. GARFIELD: Same objection.

9

10 **A I mean, like I said, they all could have.**

11 Q Could have.

12 **A Could have, yeah.**

13 Q But did they?

14 **A I don't know.**

15

16 MR. GARFIELD: Same objection.

17

18 Q Have you read any of the witness statements in this
19 case?

20 **A Possibly. I don't know.**

21 Q Possibly?

22 **A I mean, I think I have. I mean, I read a lot of**
23 **different statements, I mean.**

24 Q In any of the witness statements that you've read,
25 other than yours because I understand you heard

1 loud thumping base sounds, did any of those witness
2 statements state that they heard loud music?

3 **A I don't know.**

4 Q Okay.

5 **A Do you have copies of it I could look at maybe?**

6 Q Well, I'm just asking on your personal knowledge.
7 And your personal knowledge is that you have read
8 these statements and you don't know if they stated
9 if they had heard --

10 **A Well, I think I recall one statement in particular.**
11 **I think that's it. I don't remember reading any**
12 **other.**

13 Q All right. So --

14 **A I mean, I've read a lot of statements, so I'm not**
15 **sure.**

16 Q Well, tell me about the one statement that you
17 recall.

18 **A I really don't remember it.**

19 Q But you read one statement that you don't recall,
20 but in all of your recollection, you don't recall
21 if any of those statements said that they heard
22 loud music at the time that this incident occurred?

23 **A I don't understand the question.**

24 Q You read all these statements, including yours,
25 right?

1 **A** I may have read all those statements. Like I said,
2 I don't know.

3 **Q** All right. Maybe I'm just not asking the question.

4 **A** Maybe I'm just confused. I don't know.

5 **Q** Did you read statements other than your statements?

6 **A** Yes.

7 **Q** When you read those statements that are other than
8 your statements, do you recall if any of those
9 statements those witnesses said that they heard
10 loud music at the time that this incident occurred?

11 **A** Okay. You keep saying witnesses. And I remember
12 there was one individual that I remember who gave a
13 statement. And I don't remember what was in that
14 statement. The only other statements I've read are
15 the two officers statements that responded to the
16 scene.

17 **Q** All right. So you've only read the two officers
18 statements and another witness's statement?

19 **A** That would be correct.

20 **Q** All right. And of that witness's statement, you
21 don't recall if that witness stated anything about
22 hearing or not hearing loud music?

23 **A** That would be correct.

24 **Q** All right. That's all I wanted. We're on the same
25 page, okay.

1 So, now you believe you've been taunted, if
2 that's correct, by Mr. Martin before this stop has
3 actually occurred?

4 **A Possible.**

5 Q It's possible or you felt like he had taunted you
6 before this stop actually occurred?.

7 **A I mean, do I have that written somewhere?**

8 Q Let's go to your IA report. And maybe I'm
9 misinterpreting what you're saying. Let's go to
10 page two of your IA report.

11

12 MR. GARFIELD: The Q&A, Erika, or the --

13 MS. HARRISON: The Q&A.

14

15 Q The question reads, during our initial conversation
16 -- And I don't know who your conversation was with.
17 I presume it's with Officer White or Captain White.
18 "During our initial conversation in regard to this
19 incident on October 24, 2005, you stated Mr. Martin
20 had taunted you. Please explain how he did that."
21 Your answer was, "Initially as he drove past me
22 bobbing his head up and down, looking straight in
23 my eyes and when I asked him for his ID and he
24 stated what the F for." And I will represent to
25 you, you were actually saying an expletive. But

1 I'm more genteel. So --

2

3 MS. HARRISON: Is that an objection, Robby?

4 MR. GARFIELD: It's just a look.

5

6 Q So prior to the stop, you had already believed that
7 Mr. Martin was taunting you.

8 A In my answer there, it looks like the combination
9 of all that looked like is what I mean when I say
10 he taunted me. So a combination of him driving
11 past me as well as me making contact with him. It
12 was a combination of those two things. It wasn't
13 just him driving past me.

14 Q Okay. Combination. I'm with you here on
15 combination. So combining two events. You're
16 saying the first event was bobbing his head was not
17 -- bobbing his head, was that or was that not
18 taunting you?

19 A That was part of it. Again, my question is very
20 clear. Him taunting me was him driving past me
21 bobbing his head, okay, looking at me. And when I
22 asked him for his ID, he stated what the F for. So
23 it's very clear those two things is what I meant
24 when I say he taunted me. And that's the way I can
25 answer it because that's what I have in the

1 **question and answer here.**

2 Q Okay. I'm following you. I'm not misunderstanding
3 anything you're saying.

4 **A Okay.**

5 Q What my question, though, is this. Is that prior
6 to him even saying what the F for, what I want to
7 know is did you consider him taunting you prior to
8 you stopping him?

9 **A Clearly my answer here, him bobbing his head and**
10 **looking at me, I consider that taunting.**

11 Q That's all. And that bobbing of the head occurred
12 before the stop.

13 **A Right. Because I had to flip my patrol car around.**

14 Q All right. So at that time when he was bobbing his
15 head, he didn't know that you were going to stop
16 him for a noise ordinance violation?

17 **A I guess he didn't know.**

18

19 MR. GARFIELD: May I, Erika, off this subject
20 without anything, I just wanted to, for
21 housekeeping and not to mess up your rhythm, I
22 think what Chris said earlier about stating
23 the grounds for an objection, I actually --
24 Chris is correct is on that, I think, under
25 the district rules. If you do want to know

1 the grounds, I was thinking under state court
2 rules that I do not have to say. I think
3 under district court rules, if I have to make
4 -- if I make an objection, it has to be the to
5 the form and state the basis if that's what
6 you want to know.

7 The basis to my objection of the
8 question, How do you define taunting? would
9 be that arguably calls for a legal conclusion,
10 and I can explain that or I could just kind of
11 leave that as is.

12 MS. HARRISON: We'll just leave that as is. I just
13 wanted to know how he defined it personally.

14 MR. GARFIELD: Okay. Very good. I just wanted to -
15 - mea culpa. We can move on.

16 MS. HARRISON: Thank you, Robby.

17 MR. GARFIELD: You're welcome. Thank you.

18

19 Q Do you need a break or anything like that?

20 A No, I'm good.

21 Q You're okay?

22 A Yeah. Thank you.

23 Q All right. Just making sure. All right.

24 So you circle around, you're stopping the car,
25 Mr. Martin is getting out of his car because he's

1 actually parked in front of his apartment, right?

2 **A At the time -- I mean, I didn't know that, but --**

3 Q He's parked somewhere that --

4 **A He's parked. He's parked.**

5 Q Right. He's parked.

6 **A That is correct.**

7 Q And he's getting out of his car. You see him
8 getting out of his car?

9 **A Yeah.**

10 Q And what is he wearing at the time?

11 **A A camouflage outfit. Looks like he's in the**
12 **military.**

13 Q Looks like he's in the -- Well, did you think he
14 was hunting or . . .

15 **A I don't know. I mean, I really didn't know at the**
16 **time.**

17 Q Okay. So he had on something that looked like he
18 was in the military.

19 **A Looked like he was in the military.**

20 Q Okay. Was there any insignias like American flags
21 or . . .

22 **A I don't remember.**

23 Q Was he wearing a hat?

24 **A I really don't remember.**

25 Q All right. That's okay. All right. So he gets

1 out the car. He's walking towards a unit in that
2 apartment complex, and that was presumably might
3 have been his apartment. What do you do?

4 **A** Get out of the car. And he's walking very fast, so
5 to get his attention I said, "Sir, I need to see
6 some ID." He responded, you know, "what the F
7 for?"

8 Q You said, "Sir, I need to see some ID"?

9 **A** Let me look here. I asked him to see his ID is
10 what I asked him.

11 Q So you didn't approach him saying, "Excuse me, sir,
12 my name is Officer Fields. I'm with the Richland
13 County Sheriff's Department"?

14 **A** I did not do that.

15 Q Are you trained to do that?

16 **A** Yes.

17 Q So you did not adhere to your training when you
18 approached Mr. Martin?

19 **A** Well, again, our training is there for us, but
20 sometimes we have to -- I had to get his attention
21 quickly. And so in doing that, I didn't have time
22 to go, hey, I'm Deputy Fields. He was walking very
23 fast away from the scene, and I needed to get his
24 attention quickly. So I asked him for his ID.

25 Q You wanted to get his attention very quickly

1 because you wanted to do what?

2 **A Write him a ticket for the county noise ordinance.**

3 Q Let's talk about that writing the ticket for the
4 county noise ordinance. Prior to this incident,
5 had you ever written a ticket for a county noise
6 ordinance?

7 **A According to my internal affairs question and**
8 **answer, I had not written a ticket up to that point**
9 **for loud music.**

10 Q So you had been with -- on the force for exactly
11 how long? And I could go back to my notes and
12 figure it all out.

13 **A Well, we -- No. We -- I was a deputy on the street**
14 **for a couple months.**

15 Q For a couple months. And you were also with -- and
16 while you were also training with your FTO, right?

17 **A Correct.**

18 Q All right. And in that time frame that you'd been
19 training with your FTO and you'd been by yourself,
20 you hadn't written any tickets for a noise
21 ordinance?

22 **A According to my answer there, I had not.**

23 Q All right. So I'm going to ask you the obvious
24 question. Why was this instance different? Why
25 not just give him a warning.

1 **A** Well, he was breaking a noise ordinance and I felt
2 like he needed a ticket.

3 **Q** Well, other people have broken the noise ordinance
4 and they didn't need tickets?

5

6 MR. GARFIELD: Object to the form.

7

8 **A** I guess it's officer's discretion.

9 **Q** How many people, in your recollection and to the
10 best of your knowledge, how many people had you
11 stopped prior to this for a noise ordinance
12 violation?

13 **A** I have no idea.

14 **Q** More than one?

15 **A** I have no idea?

16 **Q** More than ten?

17

18 MR. GARFIELD: Object to the form.

19

20 **A** No idea. I have no clue at all.

21 **Q** It has to be more than one, right?

22

23 MR. GARFIELD: Object to the form.

24

25 **Q** Or is this your first one?

1 **A** I don't know. What's the date on this? 2005,
2 okay. I just don't know. I really don't know.

3 **Q** Okay. You don't know how many people you've
4 actually stopped prior to this incident, but you do
5 know that you haven't written anybody a ticket for
6 a noise ordinance violation prior to this incident.

7 **A** According to my question and answer internal
8 affairs, that is correct, that's what I said.

9 **Q** To the best of your knowledge and to the best of
10 your recollection, what was different about this
11 incident?

12 **A** Well, a lot of times when we -- officer discretion
13 when we stop people for speeding or different
14 traffic offenses, whether it's loud music and
15 things like that, we can write them a ticket
16 without, you know, hey, see your I, you know,
17 driver's license, registration, proof of insurance.
18 It's an officer's discretion issue. And we do take
19 people's attitudes in consideration when doing it.
20 And that is a -- You know, we -- A lot of people
21 can dictate, you know, how that goes, what their
22 attitude is like.

23 And so, I think in this particular situation,
24 his attitude was very, very poor.

25 **Q** Okay.

1 **A** And to get his -- to clearly get his attention, I
2 said that to him that I was going to write him a
3 ticket to get his attention on this.

4 **Q** All right. So I need to make sure I understand
5 exactly the sequence of your thought process before
6 I go further into this.

7 **A** Okay.

8 **Q** When you stopped him and got out of your car and
9 said, sir, let me see some ID, was it your intent
10 at that moment to write him a ticket?

11 **A** Yes, he broke -- he was breaking a county noise
12 ordinance. That's correct.

13 **Q** I know he was breaking -- I know that part. But
14 you're saying to me it's officer discretion.

15 **A** Uh-huh.

16

17 MR. GARFIELD: Is that yes?

18

19 **A** Yes.

20 **Q** That's officer discretion whether or not you decide
21 to write someone a ticket or not write someone a
22 ticket?

23 **A** That's correct.

24 **Q** And you explained to me before you take into
25 consideration the attitude of someone.

1 **A Yes.**

2 **Q All right. And it's my understanding that you felt**
3 as though when he passed you, he was taunting you,
4 but you don't know if he was bobbing his head to
5 the music or not. But when he bobbed his head up
6 and down and looked at you, you felt as though he
7 was taunting you?

8

9 MR. GARFIELD: Object to the form. Go ahead.

10

11 **A According to my internal affairs question and**
12 **answer, that would be part of what I thought him**
13 **taunting me was, yes.**

14 **Q So was that the attitude which precipitated the**
15 reason for why you had decided to write him a
16 ticket prior to him even making one actual
17 statement to you?

18 **A I was writing him a ticket because he broke a**
19 **county noise ordinance. Period. It's just that**
20 **simple. I mean, we -- I take attitudes into**
21 **consideration and things like that. It's a case to**
22 **case basis, though. And so he was getting a ticket**
23 **for county noise ordinance, and that's the bottom**
24 **line. And I made that decision when I got -- when**
25 **I turned my patrol car around to get out with him.**

1 Q But also, as you've stated, it's discretionary.

2 A It is discretionary.

3 Q And you had never done that before?

4

5 MR. GARFIELD: Object to the form. Asked and
6 answered.

7

8 A I'd never written a ticket for loud music before.

9 Q And there's nothing different about that event
10 versus all the other events that you have stopped
11 people for a noise ordinance?

12

13 MR. GARFIELD: Object to the form.

14

15 A I don't know how to answer that.

16 Q I'm asking you --

17 A I mean, I'm a little bit confused, I guess.

18 Q And maybe it's just the way I'm asking the
19 question. I'm asking you what was so different?
20 What's so different about this event versus all the
21 other events that you had stopped people for?

22

23 MR. GARFIELD: I'm going to object to the form. And
24 to correct my previous wrong, I'd be glad to
25 put my grounds down. But I'm just going to

1 object to the form of this question.

2 MS. HARRISON: I know one of the objections might be
3 asked and answered, but I've asked him what
4 the difference is. And I haven't -- And I
5 don't think he's been able to articulate that
6 difference.

7 MR. GARFIELD: Well, just because he doesn't
8 articulate it to your satisfaction doesn't
9 mean that he hasn't articulated it. And I
10 think beyond this, with all due respect,
11 Erika, it's bordering on annoying and
12 harassing the witness because I think he's
13 tried to answer the question. I don't want to
14 suggest the answer, but that's just what I'd
15 put on the record. Go ahead and answer this
16 question.

17

18 **A You're assuming that I made a million traffic stops**
19 **or something like that about noise ordinance before**
20 **I did this. I don't remember how many -- I may not**
21 **even dealt with anybody with loud music before this**
22 **incident. I don't know, okay.**

23 **Clearly, I said in here I always give a verbal**
24 **warning, I've never written a ticket since -- since**
25 **I've been on the road as a deputy. I mean, and**

1 that's all I can go by is what I've said here.

2 You're asking me what's the difference in this
3 situation. His music was simply extremely loud,
4 like I put in my report. And, therefore, he was
5 going to get a ticket for it.

6 Q All right. I'll just move on. So he -- So once
7 you approached him and you asked him for the ID,
8 and what type of ID does he present to you?

9 A Let's see here. Okay. He gave me a military ID.

10 Q All right. Did he give you any other additional
11 ID?

12 A Not that I have documented here. And not that I
13 can remember. He may have.

14 Q I'm going to represent to you this is Exhibit No. 6
15 from Mr. Martin's deposition. That is not the
16 actual ID, is that a similar ID?

17 A It could be. I really don't remember what the ID
18 looked like. It looks like a military ID.

19 Q And I'm going -- And this is Exhibit No. 7 from Mr.
20 Martin's deposition. Does that look like the ID he
21 may have presented to you?

22 A It could have been either one. I really don't
23 remember. But they're both military ID's, so.

24 Q So after he presented the ID's to you, what then
25 occurred?

1 **A** Well, he was irate as he handed me the ID's. He
2 was steady cursing, things like that, causing a
3 scene in the parking lot. At that point in time,
4 neighbors began to gather. I advised him to calm
5 down. This went on for some time. And, again, I
6 don't know the exact time frame on it, but it went
7 on. I told him to calm down again and again or I
8 was going to put him under arrest for breach of
9 peace. And he didn't calm down. So I went to
10 arrest him for breach of peace.

11 **Q** All right. Let's go back. You understand what
12 breach of peace is.

13 **A** Uh-huh.

14 **Q** And you understand a person's First Amendment
15 right.

16 **A** Right.

17 **Q** All right. So the first thing was he said, and
18 this is according to you, he said "what the F for?"
19 Is that the first thing he stated to you when you
20 asked him for the ID?

21 **A** According to my report, yes.

22 **Q** At that point in time, had Mr. Martin breached the
23 peace?

24 **A** No.

25 **Q** All right. And then you stated to him, "Because

1 your music was entirely loud and I'm going to write
2 you a ticket for it." And then you also further
3 state in your statement, "At that time, the subject
4 became very upset and started cursing and saying
5 things like this is bullshit, you're a racist ass
6 cop, what the F, no one ever complains about my
7 music being loud." I'm going to stop right there.

8 At that point in time, is Mr. Martin breaching
9 the peace?

10

11 MR. GARFIELD: Object to the form. Go ahead.

12

13 **A** I think he's still objecting to me. But, again, if
14 he's using fighting words or if it's so loud and
15 boisterous that it's causing a disturbance within
16 the complex then he could be. And that's why I
17 warned him to calm down several times while that
18 was going on.

19 **Q** He's solely objecting to you, right?

20 **A** I understand that. But if it causes a scene or if
21 I feel like it might be fighting words, then he
22 could be breaching the peace.

23 **Q** He's allowed to object to you. We've already
24 agreed to that, right?

25 **A** We have agreed on that.

1 Q Did he use any fighting words in here?

2 A You could --

3

4 MR. GARFIELD: Object to the form. Go ahead.

5

6 A I mean, you could interpret them as fighting words
7 at the time. I could have. I mean, yeah, very
8 easily interpreted it as that.

9 Q So if I was to sit here and call you a racist ass
10 cop, are you -- would you arrest me for breach of
11 peace?

12 A No, I would not. Not based off you calling me
13 that, no.

14 Q All right. Are those fighting words to you?

15 A Depending on how they're said, where they're said,
16 how loudly they might say, if you're aggressive
17 toward me while you're saying them. I mean, all
18 that stuff I take into consideration. Not just --
19 Go ahead.

20 Q No. Go ahead. Finish your answer.

21 A Not just you're a racist ass cop or why the F for.
22 It's a lot more than just him saying those words.

23 Q So you don't think I'm aggressive?

24 A I don't think you're what?

25 Q You don't think I'm aggressive, do you?

1 **A No.**

2 Q All right. So when I say you're a racist ass cop,
3 that's not me being -- I'm not being aggressive
4 towards you?

5 **A No, I don't feel that way. That's your opinion.**

6 Q All right. Let's see. If I said to you you're a
7 mother fucker, this is bullshit, am I being
8 aggressive with you?

9 **A How you said it right there, no.**

10 Q All right. Am I breaching the peace if I'm saying
11 you're a mother fucker?

12 **A Directed toward me, in this setting, no, you're**
13 **not.**

14 Q If I was standing outside and you and I weren't in
15 this building, would this -- would that breach of
16 peace?

17 **A If your mannerisms are different, if you're very**
18 **aggressive while you're doing it, if you're very**
19 **loud and you start causing a scene, and causing a**
20 **scene means people start getting drawn to the scene**
21 **to see what's going on, that's very possible you**
22 **could breach the peace, yes. It's very possible.**

23 Q So if I was -- If you had stopped me outside for
24 littering and you were trying to write me a --
25 well, I think it's a \$200 ticket, I can't remember.

1 Whatever the fine is for it. - And I said that's
2 bullshit, is that breach of peace?

3 **A No, just that alone. Just that alone?**

4

5 MS. HARRISON: Sorry. Robby just -- Robby
6 distracted me.

7 MR. GARFIELD: My fault. I apologize.

8

9 Q All right. I'm going to -- The question was, if I
10 was standing outside and I had placed -- and I had
11 littered in front of the parking lot and you tried
12 to ticket me for it and I said this is bullshit?

13 **A Based on that right there, no, that's not breach of**
14 **peace.**

15 Q All right. And you hand me the ticket and I said
16 you're just a mother fucking racist cop, is that
17 breach of peace?

18 **A No.**

19 Q All right. So I'm going back to your statement.
20 I'm going back to your statement. And I think it
21 was the -- I think I was on the last quotation,
22 which is, "This is bullshit, you're a racist ass
23 cop, what the F, no one ever complains about my
24 music being loud." At this time --

25

1 MR. GARFIELD: I'm sorry, Erika, where are you
2 reading that from? I'm just --

3 MR. FIELDS: From my IA statement, right?

4 MS. HARRISON: Right.

5 MR. GARFIELD: Because I don't want to ask him.

6 Okay. I got you. Thank you.

7

8 Q At this time, is Mr. Martin breaching the peace?

9 A I have in my statement, "He continued to be curse
10 and be irate about the situation saying the same
11 things over and over again: you racist ass cop,
12 mother fucker, this is bullshit. I advised Mr.
13 Martin several times to calm down; he did not. The
14 crowd continued to gather and I told him to calm
15 down again."

16 It was just continuos him being loud, cursing.
17 He was, in general, creating a scene. And some of
18 it was directed at me, some of it was just him
19 being loud and boisterous and cursing and carrying
20 on.

21 Q But his comments, though, were directed directly at
22 you, right?

23 A Some of his comments were, yes, and I have those
24 here.

25 Q Which comments were not directed at you?

1 **A** He was very loud. He was cursing very loudly.
2 Some at me. Just in general, he was cursing. He
3 was told to calm down. He created a scene and he
4 was arrested for breach of peace.

5 **Q** I guess my question, though, was exactly what
6 comments were not directed at you?

7 **A** I can't tell you that. Some -- I mean, some of
8 these I have written down here were directed at me.
9 I mean, when he's saying this is -- you know, this
10 is bullshit, he could have been talking to somebody
11 who come on scene there. I don't know. I just
12 remember those things coming out of his mouth.

13 **Q** Is he looking directly at you at the time?

14 **A** No. Not the whole time, he was not.

15 **Q** Is he talking -- Who did he talk -- Did he converse
16 with someone and say isn't -- is -- Did he say --
17 He's standing across from you, right? Like I am?
18 Are y'all about -- Y'all are a little closer?

19 **A** No. He's not standing -- He's not standing across
20 from me.

21 **Q** Well, where are y'all? Are you in front of the
22 truck, in front of the white Ford Explorer, in
23 front of the apartment?

24 **A** I don't exactly remember.

25 **Q** All right. Well, you don't exactly remember where

1 you were, but how far apart were y'all when y'all
2 were having this dialogue?

3 **A It could have been from me to you.**

4 **Q All right. So we're about this far away. Does he**
5 look over to someone and say this is bullshit?

6 **A I don't remember.**

7

8 MR. MILLS: Erika, you just may want -- The record's
9 not going to reflect --

10 MR. GARFIELD: Dimensions.

11 MR. MILLS: -- how far that it is.

12 MS. HARRISON: Oh, sorry. Thank you.

13

14 **Q I think -- Well, I'm five feet tall, so we're --**
15 this is probably about three feet.

16

17 MR. GARFIELD: I think we've done this before. I
18 think it's like three and half to four feet.

19 MS. HARRISON: Three and a half.

20 MR. MILLS: Measured the table?

21 MR. GARFIELD: I think this is what -- This
22 subject's come up before.

23 MS. HARRISON: Yeah. You've measured it before.

24

25 **Q All right. So about three and a half feet. So you**

1 and I are about three and a half feet apart and
2 y'all are having this dialogue. It's loud.
3 according to you, it's loud. Is he screaming at
4 you?

5 **A He's yelling. Screaming, yelling, same thing.**
6 **But, yeah, he's yelling.**

7 **Q Is he at the top of his lungs?**

8 **A I mean, I don't know what the top of his lungs are,**
9 **but he was very loud. It was enough to cause a**
10 **scene where people were coming out of their**
11 **apartments.**

12 **Q Now, I asked you again does he look over to someone**
13 **in this crowd that's gathering and say --**

14 **A And I said I don't know.**

15 **Q You don't know?**

16 **A I don't know.**

17 **Q All right. So you don't know -- What you don't**
18 **know is if any of his comments were directed to**
19 **other people, but you do know that the comments**
20 **that he was making towards -- but you do know**
21 **comments that he was making towards you?**

22 **A Here's what I know, is that he was very loud, he**
23 **was very boisterous, he was cursing, okay. He**
24 **disagreed with what I was doing. But in the midst**
25 **of all that, he was cursing very loudly causing a**

1 **scene disrupting that property. And, therefore, he**
2 **was placed under of arrest for breach of peace.**

3 Q And as you and I sit here today, you didn't respond
4 in kind?

5

6 MR. GARFIELD: Object to the form.

7

8 Q Well, in kind meaning did you reciprocate with
9 saying any profanity?

10 **A Negative, I did not.**

11 Q I'm sorry. So, negative, you didn't respond with
12 profanity?

13 **A No, I did not.**

14 Q As we sit here today, even though the table is
15 about three feet, you and I are more like five feet
16 apart, right?

17 **A Okay. Yeah.**

18 Q All right. So we're about five feet apart. And is
19 that about how far you were from Mr. Martin?

20 **A Approximately, as I remember it, yes.**

21 Q All right.

22

23 MS. HARRISON: That's all. Let's break for lunch.

24

25 (A lunch break was taken at this time)

1 Q We were back in this area about regarding what was
2 said to you when you initially approached Mr.
3 Martin, right? We had gone over that area,
4 correct?

5 A I guess. I don't remember.

6 Q We've talked about the fact that you approached him
7 and said and your -- according to your statements,
8 say, sir, let me see your ID, right? That's
9 something that you approached with him?

10 A Yeah. I approached him and said let me see your
11 ID.

12 Q Now, of course, he responds -- Now, he did comply
13 and actually give you some ID, right?

14 A Yes.

15 Q All right. So he gives you the ID. So he's in
16 compliance with your request.

17 A Yes.

18 Q Now, at that point in time, did you say anything
19 about that specific ID?

20 A As far as I can remember, I don't believe I did.

21 Q So was it sufficient for you?

22 A Not to write a uniform traffic ticket, no. The
23 military ID would not be sufficient, not for me.

24 Q Did you ask him for additional ID?

25 A As far as I can remember, I did not. Because at

1 the time I was just trying to get him to calm down,
2 so I wasn't able to.

3 Q And during this time while he's calling you a
4 racist, while he's saying all these other things,
5 you're just asking him please calm down?

6 A Yeah. I keep telling him calm down.

7 Q So no other words are exchange by you other than
8 please, sir, calm down?

9 A That'd be correct.

10 Q All right. Even though he's calling you a racist,
11 even though he's calling you an MF, even though
12 he's calling you all these names, you're at please,
13 sir, calm down?

14 A According to my statement and my report, yes.

15 Q All right. Now, I asked you previously what words
16 were fighting words. Were any of these words
17 fighting words to you directly?

18 A As far as him saying "this is bullshit, you're a
19 racist ass cop," things of that nature, again, the
20 -- those words alone are not fighting words. But
21 the aggression on top of a crowd gathering, okay,
22 on top of things he said very loudly could be
23 construed or interpreted as fighting words, yes.

24 Q And excuse me, I might seem frustrated, but I'm
25 just trying to really just understand exactly what

1 -- and I understand what your answer is. You're
2 saying that this could be construed as. What I'm
3 asking you, is it fighting words what he said to
4 you?

5

6 MR. GARFIELD: Object to the form. Go ahead.

7

8 **A I interpreted the situation as him breaching the**
9 **peace. To the best of my knowledge at the time and**
10 **through my reports and things of that, he was**
11 **breaching the peace. As far as actual fighting**
12 **words, him engaging me wanting to fight me for**
13 **breach of peace, I don't recall that. But as far**
14 **as him, you know, disturbing the peace, breaching**
15 **the peace, he did that. And I felt like he did**
16 **that.**

17 **Q Because a crowd came out and saw what was**
18 **happening?**

19 **A Because of how loud he was. Because of the words**
20 **he was using, how loudly he was using them and**
21 **because of the scene that he caused.**

22 **Q But it had nothing to do with the crowd?**

23 **A That's what I just said. The scene, the crowd,**
24 **yeah.**

25 **Q Okay. Was the crowd doing anything to you?**

1 **A** **Not that I was aware of, no.**

2 **Q** All right. A crowd is permitted to look --
3 onlookers are permitted to watch you do your job,
4 right?

5 **A** **Yeah.**

6 **Q** All right. So if the crowd came out and all he was
7 doing was exchanging with you his ID and was
8 saying, yes sir, no sir, and a crowd still came
9 out, he wouldn't be in breach of peace, would he?

10

11 MR. GARFIELD: Object to the form. Go ahead.

12

13 **A** **And, again, in my experience, a crowd would not**
14 **have gathered had he been doing yes sir, no sir.**

15 **Q** There are always gawkers or onlookers.

16 **A** **Not always, no.**

17 **Q** Well, we won't say always. On occasion, are there
18 gawkers and onlookers to what -- when you make
19 stops?

20 **A** **Depending where you're at, what part of the county**
21 **you may be in, there could be, but not always.**

22 **Q** And when you do make a stop and there are onlookers
23 or gawkers, that person who you've stopped isn't in
24 breach of peace at that time?

25 **A** **No. There would be no reason that they'd be in**

1 **breach of peace.**

2 Q So a crowd gathering doesn't necessarily
3 precipitate a breach of peace arrest?

4 A **No. It was a totality of all the circumstances**
5 **involved with this situation.**

6 Q All right. And then that was your measuring stick
7 for breach of peace was the totality of the
8 circumstances?

9 A **Yeah. Not just the crowd gathering, but all the**
10 **other things I said as well.**

11 Q The totality of the circumstances, meaning the
12 loudness, the profanity and the fact that a crowd
13 was gathering was the totality of the circumstances
14 for breach of peace?

15 A **Absolutely.**

16 Q All right. Now, while you're describing the scene
17 in your statement, the first thing -- let's go to
18 the actual when you're ready to put him under
19 arrest.

20 How far away is he from you at that moment in
21 time when you're saying you're under arrest?

22 A **I don't remember.**

23 Q So he could have been less than a foot away or five
24 feet way?

25 A **Well, I don't remember, so it could have been**

1 **either or.**

2 Q Okay. So you don't know the distance. All right.
3 So we'll agree you don't know the distance how far
4 you were away from him?

5 **A That's correct.**

6 Q Tell me exactly how you were able to put the
7 handcuff on his right arm.

8 **A Well, I approached him. I told him he was under**
9 **arrest for breach of peace and I put the handcuff**
10 **on his right arm.**

11 Q All right. Is he facing you or do you turn him
12 around?

13 **A I really don't remember. I mean, clearly, he was**
14 **turned around.**

15 Q Okay.

16 **A Whether I turned him around or not, I don't**
17 **remember. But clearly, he was turned around. So I**
18 **got one cuff on and then that's when the fighting**
19 **again and the resisting began, after I got the cuff**
20 **on him.**

21 Q So he's -- So I just want to make sure I -- I mean,
22 I understood the all the things that you said. But
23 he is turned around in order for you to put the
24 handcuff on his right arm?

25 **A That's right. One handcuff was on and then that's**

1 when the fighting and resisting started.

2 Q Did you ask him to turn around?

3 A I don't remember, but, I mean, we typically do,
4 yeah. I don't just grab hold of somebody when
5 they're under arrest. They have an opportunity to
6 turn around, put their hands on -- behind their --
7 behind them.

8 Q So Mr. Martin turned around or did you physically
9 turn him around?

10 A I don't remember.

11 Q But --

12 A They have an opportunity to turn around. I can
13 tell you that.

14 Q Uh-huh.

15 A Okay. So he may have turned around himself. I
16 don't remember. But I just know I had a cuff on
17 him and the fighting and the resisting began.

18 Q So you were able to -- He was still enough for you
19 to be able to put a right handcuff on him?

20 A Still enough, I don't know. We put handcuffs on
21 people that are moving around all the time. So he
22 -- I don't remember.

23 Q Well, if we don't use the word "still," was his
24 movement or his -- and I don't know a better word
25 to describe what he might have been doing at that

1 time that you were able to put the handcuff on him.
2 But it was -- He wasn't moving to the point that
3 you were unable to put a handcuff on him?

4 **A Clearly, because I got it on him.**

5 **Q** All right. That's fair enough. All right. So is
6 he in compliance at that second that you're able to
7 put the handcuff on him?

8 **A I'm not sure. I'm not sure if he was or not.**
9 **Again, I know this, once I got that handcuff on**
10 **him, that's when the resisting and fighting began.**
11 **So, in saying that, and in my report it says that,**
12 **my guess would be, yeah, maybe he was compliant to**
13 **one handcuff. But the problem is you got to be**
14 **compliant to two.**

15 **Q** All right. So he's got to be compliant to two.
16 Now, he has turned his back to you with -- and
17 you've got the one handcuff on him, right?

18 **A Correct.**

19 **Q** Now, you said the fight -- Well, he starts flailing
20 around or what does he start doing?

21 **A Let me look at my report here. It states in my**
22 **report, "I told Mr. Martin he was under arrest for**
23 **breaching the peace and he did place his hands**
24 **behind his back. He did turn around. I placed one**
25 **handcuff on his right arm and then that's when the**

1 fight incurred. He began to pull away from me and
2 began kicking and swinging his left arm around
3 striking me in the left leg and in the left arm."

4 Q All right. That last sentence that you read, you -
5 - it says, "I turned Mr. Martin around." So you
6 already have a hand on Mr. Martin at that
7 particular time when you have turned him around and
8 you've put the right -- you've put the cuff on his
9 right hand.

10 So am I to assume that you were actually the
11 person who turned him around?

12 A Where is that at? I'm sorry.

13 Q It's in that sentence that you read.

14 A I think we're reading from two different documents
15 here.

16 Q I'm reading from this document. I'm reading from
17 your actual statement.

18

19 MR. GARFIELD: Is this Exhibit No. 2 you're
20 referring to?

21 MS. HARRISON: Yeah.

22

23 Q Okay. I'm sorry. I thought we were reading from
24 the same document.

25 A Okay. And where are you at in that?

1 Q I'm at right before -- You see where you might have
2 put the central 263 10-83?

3 A Yeah.

4 Q I'm above that.

5 A Okay.

6 Q Okay what?

7 A What are you asking, I'm sorry? What's the
8 question?

9 Q My question was, can I assume that you actually
10 physically turned Mr. Martin around based on this
11 sentence?

12 A Can you assume that I turned him around? I don't
13 think from that sentence you can, no.

14 Q Well, it says "I turned Mr. Martin around." So did
15 Mr. Martin turn around or did you turn him around?

16 A I think that sentence is pretty unclear. I'm not
17 sure. And, like I said before, I'm just not sure
18 whether he turned around.

19 Q Okay. So --

20 A I mean, it might -- it may be clear to you. I'm
21 just, I'm not real clear about it.

22 Q This is your statement you wrote, right?

23 A Correct.

24 Q And you reviewed this statement, right, before you
25 signed off on this statement?

1 **A** **That's correct.**

2 **Q** So what you're telling me is that this sentence is
3 not clear -- it's not clear to me or rather the
4 sentence is not clear to you if that is actually
5 correct or not about whether or not you turned Mr.
6 Martin around.

7 **A** Well, I turned him around. We can turn people
8 around and say, hey, turn around and put your hands
9 behind your back verbally. They may turn around.
10 We may, sometimes, have to physically turn them
11 around. It doesn't actually say I physically
12 turned him around, so I really -- he might have
13 turned around when I asked him to turn around. The
14 point was I got him to turn around.

15 **Q** All right. So Mr. Martin turned around, but you
16 don't know if you physically turned him around or
17 if he just complied and turned around?

18
19 MR. GARFIELD: Objection. Asked and answered.

20

21 **A** According to my police report, the actual report,
22 is he turned around on his own.

23 **Q** All right.

24 **A** And it's a lot more clear in there in the police
25 report.

1 Q The police report is more clear than?

2 A Than the Internal Affairs statement. In other
3 words, my police report it clearly says he turned
4 around. He turned around himself. "C. Martin
5 turned around and RO placed on cuff -- and I placed
6 one cuff on him on his right arm. And then Mr.
7 Martin tried to pull away. That's when the
8 resisting began." In here it's just a little
9 unclear about how he turned around. Did I
10 physically turn him around, did I verbally tell him
11 to turn around. He did turn around, and so it's
12 more clear in my police report.

13 Q All right. So physically turned around. All
14 right. Good.

15 A No, no, no.

16 Q No. I mean, I'm sorry, he turned -- Mr. Martin
17 turned around.

18 A Correct. He turned around when he was told he was
19 under arrest. That's correct.

20 Q Now, at that juncture, you've got the right arm --
21 you've got the cuff on his right hand and you say -
22 - his back is to you?

23 A That would be correct.

24 Q And his left arm is free. So you're basically --
25 your left side and his left side are facing --

1 well, not facing each other, but -- His back is to
2 you and you're facing his back?

3

4 MR. GARFIELD: Object to the form.

5

6 **A He's turned around. I have one cuff on him. As**
7 **far as our body placement, I can't be sure where my**
8 **body was at to his body. But his left arm was**
9 **free. I do know that.**

10 Q And he started to fight and fling his left arm.
11 Well, tell me, is there something distinguishing
12 between the fight and flinging or is he just
13 flinging his left arm?

14 **A So you're asking if there's a difference between**
15 **flinging and what? And fighting?**

16 Q Well, I'm just trying to figure out, I mean, you
17 say you fighting and flinging. He's got the -- I'm
18 trying to visualize this. So I'm trying to get you
19 to tell me exactly how this scenario occurred. So
20 you've got the right -- you've got the cuff on him.
21 His hand is behind his back and his left arm is
22 free. So what is he doing with his left arm?

23 **A At that point in time, he begins to pull away from**
24 **to resist and start swinging his arm around.**

25 Q All right. So he's pulled away from you. So how

1 far away has he pulled --

2 **A Well, no, I have him still. I mean, I have him.**
3 **He never was out of my custody. I had my hands on**
4 **him the whole time.**

5 Q All right. So you weren't -- He didn't pull away
6 and you weren't chasing him?

7 **A No, nothing like that.**

8 Q All right. So you've got him -- He's not under
9 control the way you want him under control, but
10 you've got a hand on him?

11 **A I got a handcuff on his right hand.**

12 Q All right. So does he hit you at all with his left
13 arm?

14 **A Yes.**

15 Q Where does he hit you with his left arm?

16 **A He hits me in the left arm and he kicks me in my**
17 **left leg.**

18 Q So his left arm hits you in the left arm?

19 **A There you go.**

20 Q So his back is still to you and he's -- and I'm
21 swinging my arm to the left and he's just kind of
22 swinging back. Is that what he's doing? Is he
23 swinging back with left arm?

24

25 MR. GARFIELD: Object to the form.

1

2 **A** Possibly. I mean, I know, according to my report
3 again, he did strike me. I mean, the way you're
4 imitating it as is he struck me several times. He
5 struck me one time with his left arm.

6 **Q** Struck you once. Oh, okay.

7 **A** And then he kicked me with his leg.

8 **Q** How many times did he kick you?

9 **A** And it's clear in the report, again, that that
10 happened one time.

11 **Q** So one strike to the left arm and one strike to the
12 left leg?

13 **A** Correct.

14 **Q** All right. And then you then -- And you have him
15 underneath control that you're able to reach for
16 your radio? Is it the -- Do you reach for your
17 radio or is it attached to your --

18 **A** It would be attached up here.

19 **Q** Attached to your chest area?

20 **A** Yeah.

21 **Q** Well, I mean, --

22 **A** Right in here.

23 **Q** Well, what's right in here? Is that --

24 **A** Okay. That's my chest area.

25 **Q** Chest area.

1 **A** Middle of the chest.

2 **Q** All right. So you're taking your left arm and you
3 are calling for a 10-83?

4 **A** I could have took my right or left arm. I don't
5 know. But he's continuing to pull -- push away
6 from me, trying to get away from me in a defensive
7 way. And I called for backup. That's correct.

8 **Q** And when do you actually take him to the ground?

9 **A** Sometime after that I took him down to the ground.

10 **Q** Is it seconds or minutes?

11 **A** Oh, no. I mean, this happened with -- I mean, as
12 far as the confrontation, it happens within a
13 matter of seconds, as far as that goes. As far as
14 backup getting there, it took a little bit.

15 **Q** So you take him to the ground, he's on the ground,
16 tell me what else, what next happens.

17 **A** At that point in time, -- so you want to know what
18 happens after he's on the ground?

19 **Q** Uh-huh.

20 **A** Okay. After I have him on the ground, his left
21 hand is underneath his body. I am on top of him.
22 And his wife comes running out and she -- and he
23 tells her to videotape me beating him up and
24 hurting him and stuff like that. And she has her
25 cell phone where she begins to take pictures at

1 that point in time.

2 Q You're on top of him. How are you on top of him?

3 A I believe I have a knee in his back. I believe it
4 would be my left knee was on top of him.

5 Q Have you done any knee strikes at this point?

6 A Not at this point in time, no.

7 Q So what have you done in order to secure Mr.
8 Martin?

9 A At this point in time, I'm telling her to get back,
10 as I recall and remember it. And I'm continuing to
11 tell him to give me his left hand. He won't. I
12 take out my capsicum, which is like mace is a
13 better way to understand what that is, and I try to
14 spray him with it, and that was ineffective. I
15 sprayed him on the back of the head with it. And
16 then I give two knee strikes to his right side.
17 And he still did not give his left hand up at that
18 point in time.

19 Q You said something about you were trying to tell
20 Ms. Martin --

21 A I told her she needed to get back from the
22 situation.

23 Q As soon as she came out?

24 A Right.

25 Q To the scene?

1 **A** **Right. She just needed to back up. That's right.**

2 **Q** **So you're on top of Mr. Martin with your left knee.**
3 **Ms. Martin comes out?**

4 **A** **Correct.**

5 **Q** **In between your left knee being on Mr. Martin's**
6 **back and Ms. Martin coming out, he's calling for**
7 **his wife?**

8 **A** **Yeah, I believe so. I believe that's what was**
9 **going on.**

10 **Q** **So he's asking for her to come out there to see**
11 **what's going -- to help him?**

12 **A** **Yes. He's asking her to come out there to**
13 **videotape and take pictures of me beating him up.**

14 **Q** **And then you're asking for his hand?**

15 **A** **Right. His left hand is still underneath his body**
16 **at that point in time.**

17 **Q** **And you pull out the mace or capsicum?**

18 **A** **Yeah, capsicum.**

19 **Q** **How many bursts of capsicum do you give him?**

20 **A** **I would have to refer, probably, to my use of**
21 **force. But I think one or two bursts is what I**
22 **tried to give him, as I remember it.**

23 **Q** **Is that in -- In the three statements that you have**
24 **in front of you, is that anywhere indicated?**

25 **A** **I'm not sure. I know it says I used it. I don't**

1 think it says how many bursts. I believe one or
2 two times, though, as I remember it, I tried to
3 spray him.

4 Q And you sprayed directly at the back of his head?

5 A Yeah. I couldn't -- It's made to spray into the
6 eyes, but I just wasn't able to do that.

7 Q You weren't able to reach his face --

8 A His face was -- Yeah. He turned his head away, so
9 it was totally ineffective.

10 Q Now, that's ineffective. Your request -- he's not
11 -- he hasn't given up his left hand?

12 A Right. The whole time I'm requesting, you know,
13 give me your left hand.

14 Q And then what next do you do?

15 A And then I give two knee strikes to his right side.

16 Q And what does he do?

17 A And that was ineffective as well.

18 Q Anything else that you do as a maneuver to assist
19 you in trying to get the left hand?

20 A No, not at that point in time. I just sat. I
21 stood by and waited on backup to get there.

22 Q How many times did you call for backup?

23 A I only called once, I believe.

24 Q So at no point in time did you get back on your
25 radio while you were on top of Mr. Martin?

1 **A** I may have when I was top of him. I may have, you
2 know, maybe said -- you know, where you guys at,
3 something like that. But . . .

4 **Q** Didn't you ask for a taser gun?

5 **A** Yeah. But that was originally when he was
6 resisting, the first time I got on the radio.

7 **Q** So the first time you got on the radio -- Now, you
8 were on the radio while he was standing up, right?

9 **A** That's correct.

10 **Q** And then you were on the radio while you had --

11 **A** That part I don't know.

12

13 MR. GARFIELD: Hold on. Please allow her to finish
14 her questions first before you go ahead and
15 answer it. Okay. Thank you.

16

17 **Q** You got on the radio again while your knee was in
18 his back?

19 **A** I don't think so.

20 **Q** You don't think so. But then previously you said
21 you may have.

22 **A** I may have. But I don't think I did. I don't
23 remember it.

24 **Q** All right. So you just don't remember if you did
25 or did not?

1 **A** **Correct.**

2 **Q** All right. So you don't remember getting back on
3 the radio at any point in time. Now, how long are
4 you on top of Mr. Martin?

5 **A** **According to my report -- I don't recall. It was**
6 **a couple of minutes, though. I mean, it could be**
7 **two to five minutes. Three to five minutes,**
8 **something like that.**

9 **Q** At any point in time, is Mr. Martin saying "You
10 can't do this to me, I'm an American soldier"?

11 **A** **I don't remember.**

12 **Q** You don't remember that at all?

13 **A** **No.**

14 **Q** All right. Do you --

15 **A** **I mean, it's possible, but like I said, I don't**
16 **know.**

17 **Q** It's possible?

18 **A** **Uh-huh.**

19 **Q** Oh, well, wait a second. Let's go to your
20 statement.

21 **A** **Okay.**

22 **Q** Your statement right here. Isn't --

23 **A** **Okay.**

24 **Q** So that is something that you recall him saying?

25 **A** **Yeah. Yeah. That's correct.**

1 Q Do you recall at any point in time saying "You're
2 just another black statistic"?

3 A No, ma'am.

4 Q "Another notch on my belt"?

5 A No, ma'am.

6 Q Do you ever recall using the word "statistic" all
7 during this encounter with Mr. Martin?

8 A Okay. What I said is basically in the midst of
9 after he was arrested and after the handcuffs were
10 on him, I told him he was just another stat,
11 basically he's nothing special. You know, he's
12 another person going to jail. And just another
13 person. I'm doing my job. Have a good day.

14 Q Have a good day.

15 A Yeah. I mean, that's kind of the way is, hey, he's
16 nothing special in this situation. He's another
17 person who broke the law. He's somebody else who's
18 going to jail and that's the way it is.

19 Q All right. I think -- I mean, I understand what
20 you're saying. I understand that there's a
21 meaning, a connotation behind what you're saying,
22 but my question, though, to you is this. Did you
23 specifically tell him you're just another stat?

24 A According to my question and answer with internal
25 affairs, I did tell him that, yes.

1 Q But you didn't give him an explanation of this
2 meaning of, you know, you're just another person
3 going to jail, you're just another -- you're
4 nothing special?

5 A No. I don't have to. So, no, I did not.

6 Q All right. So you just leave it at you're just
7 another stat to him?

8 A Probably so.

9 Q Now, going to back to my initial -- you know,
10 there's some other comments that we talked about
11 earlier. Talked about the Johnnie Cochran comment.
12 We talked about the fact that you said, you know,
13 about his career. Is it professional to tell
14 someone that they're just another stat?

15 A Professional?

16 Q Uh-huh.

17 A In what way?

18 Q Is it professional as a Richland County Sheriff's
19 deputy to tell a person that's under arrest you're
20 just another stat?

21 A Is it professional to ask somebody if they're
22 another stat, that's your question?

23 Q No, I didn't say ask them if they're --

24 A I mean, is it professional to tell somebody they're
25 another stat. Probably I would choose my wording

1 differently, okay. Probably not the best way to
2 say that, no.

3 Q Okay. So once -- You said it took a little while
4 for backup to get there?

5 A Yeah.

6 Q And how many officers appeared on the scene at that
7 time?

8 A Well, originally two.

9 Q And that would be Deputy Clarke and Deputy Smith?

10 A Correct.

11 Q And then at the conclusion of the arrest, how many
12 officers --

13 A We might have had eight to ten. I don't know. And
14 I'm speculating there.

15 Q Eight to ten.

16 A I'm speculating, yeah.

17 Q And then had the crowd dissipated at the time that
18 all these officers had arrived?

19 A I don't remember.

20 Q Now, as your -- After the arrest is all completed
21 and done, after you -- Mr. Martin's been arrested,
22 handcuffed, taken over to the cruiser, your job
23 then is to do what? To gather information?

24 A Do the paperwork.

25 Q To do the paperwork.

1 **A** Uh-huh.

2 **Q** Do you go and ask for witnesses?

3 **A** I think other officers did that. I did not do
4 that.

5 **Q** Your paperwork solely involved what, exactly?

6 **A** It would be an incident report, arrest report,
7 warrant worksheet, a use of force form, an evidence
8 form. I mean, all those things.

9 **Q** And you do that all at the scene?

10 **A** We do it all -- I mean, we would do it before the
11 shift is over. And not necessarily on the scene
12 there, no. But, I mean, we try to knock out the
13 arrest report. Warrant worksheets, arrest report,
14 incident report usually knocked out on the scene,
15 yes.

16 **Q** Okay. And I think you just named off three
17 documents to me.

18 **A** Use of force.

19 **Q** Use of force.

20 **A** That would usually be probably turned in the next
21 day with the incident report. And then the
22 evidence form would be turned in, obviously, when
23 you do evidence.

24 **Q** I think -- There are a lot of forms.

25 **A** Okay.

1 Q So which ones do you actually do at the scene?

2 A Okay. You can do all of them at the scene.

3 Q Agreed.

4 A And which ones I did that day I don't really
5 remember, okay. But I know the two that definitely
6 had to be -- the three that had to be done there
7 was the arrest report so he could go to jail and
8 the warrant worksheet. Those are the two things
9 you need for jail. Okay. And then the incident
10 report.

11 Q All right. Those three items were done at the
12 scene. How long do you think it took you to
13 complete those items?

14 A Let me back up for a minute. The incident report
15 was probably done -- It was done that day. I don't
16 know if it was done actually on the scene. Let me
17 clarify a couple things here. Two things were done
18 on the scene because they have booked in jail.
19 Okay. Usually we'll leave the scene to knock out
20 maybe an incident report, maybe drive up the road
21 or something like that.

22 So, I mean, as far as things getting done that
23 day, I know for a fact those three were done that
24 day.

25 Q How long were y'all out at the scene after this

1 arrest?

2 A Well, I mean, as far as -- I mean, I guess there
3 was a situation with the phone. There was officers
4 talking to witnesses getting some statements,
5 things of that nature. I don't know. I mean, I
6 could speculate, but I'm not even going to try to
7 speculate. I really don't know. Could have been a
8 half hour, could have been an hour. I don't know.

9 Q Let's think it might be on the longer side of over
10 an hour.

11 A Okay.

12 Q What things would you have been -- Because that's
13 an hour length of time, I mean, that's -- An hour's
14 60 minutes, so, you know, we've been in deposition
15 for, you know, a couple hours now talking back and
16 forth. So in an hour's length of time, what do you
17 -- what could you have accomplished in hour lengths
18 of time at the scene?

19

20 MR. GARFIELD: Object to the form. Go ahead.

21

22 A Well, it just depends. I mean, we have a three
23 page incident report, we have two or three warrant
24 worksheets, traffic ticket, two arrest reports.
25 So, I mean, that's possible.

1 Q Are you talking to some of the other officers about
2 exactly what happened?

3 A Yes. I would talk to my supervisors about what
4 happened. That's correct.

5 Q Are you getting some guidance as to what to charge
6 them with?

7 A No. In this situation here, just some -- maybe
8 some guidance of, you know, how best to maybe write
9 the report. You know, if you write a report and
10 they may give it back to you, something like that
11 because you -- just different things in the report.
12 Maybe different advice as far as like, for example,
13 taking the phone into evidence that day. Things
14 like that. That was a supervisor's call. Just
15 stuff like that.

16 Q Did anyone give you any guidance on how to write
17 your incident report?

18 A How to write it?

19 Q Uh-huh.

20 A No, not how to write it. We always get guidance as
21 far as, you know, what order to put stuff in and
22 things like that. It's always a good teaching tool
23 for supervisors for newer officers and things like
24 that.

25 Q So were you getting any guidance as to what order

1 to put into your order -- what order of events you
2 should put in this incident report?

3 **A I don't remember that. I know that when it comes**
4 **to writing reports, I mean, that's something you**
5 **always want to seek out. What's the best way to --**
6 **Maybe the best way to put it is maybe what words to**
7 **use correctly. Things of that nature. But as far**
8 **as what happened, what happened is what happened**
9 **and you sometimes you get help on how to put that**
10 **on paper. That's the best way I can put it.**

11 **Q Let's look at your incident report then.**

12 **A All right.**

13 **Q You utilized the word "loud and boisterous" in your**
14 **incident report, do you not?**

15 **A I could. Where's it at?**

16

17 **MR. GARFIELD: Referencing a certain place?**

18 **MS. HARRISON: I just found it.**

19

20 **Q Is this page two? How do I --**

21 **A Yeah. That's page two. That's page two what**
22 **you're looking at right there.**

23 **Q At that time C. Martin, and that's Carlos Martin,**
24 **continues to be loud and boisterous towards RO**
25 **cursing and calling RO racist. That's what --**

1 something you wrote in there.

2 **A Uh-huh.**

3 **Q** All right. Loud and boisterous, are you utilizing
4 those words based upon any terminology that you've
5 been taught or are you using those words because
6 those are just words that you decided were
7 appropriate words to use in this report?

8 **A** Well, they are appropriate words to use in this
9 report, okay. But anytime in our training and
10 things like that, there are certain things we look
11 for. And there are going to be certain words where
12 we may put on paper that we are trained, okay,
13 whether through the academy or through our FTO and
14 things of that nature that are the correct words
15 that -- Best thing I can say is correct words to be
16 used.

17 **Q** So the correct words here would be "loud and
18 boisterous"?

19 **A** Well, that's what he was, he was loud and
20 boisterous. So it fits what -- It fits what took
21 place out there.

22 **Q** So loud and boisterous are the terms --
23 terminologies that you've been taught as opposed to
24 terminology that you would have just utilized in
25 your everyday common language?

1 **A** I don't think boisterous is something I go around
2 saying, you know, went around saying before. But
3 it's something that, again, it's words that --
4 Again, it's what he was being on the scene out
5 there is the best I can tell you, you know.

6 **Q** So as you've been taught what loud and boisterous
7 is in your training through the Criminal Justice
8 Academy, through your field training officer, what
9 does loud and boisterous not mean to you but what
10 has it meant to you in your training?

11 **A** I mean, loud and boisterous can mean someone is
12 disorderly. I mean, as far as this situation goes.

13 **Q** So is that disorderly based upon the ordinance
14 disorderly or just disorderly in a general term of
15 reference?

16 **A** He was loud and boisterous with his voice, things
17 of that nature. And that's what that means in that
18 context.

19 **Q** So with --

20 **A** When I say loud and boisterous in this context, I'm
21 referring to his actions and the way he was acting
22 that day.

23 **Q** But those words are based on your training, though,
24 not just your normal everyday use of the language?
25 Well, that's and that's a really --

1

2

MR. GARFIELD: Object. Asked and answered.

3

4

Q -- bad question. The loud and boisterous are the terms that you've been taught to use, not terms that you would have just generally used in just an everyday drafting your report?

5

6

7

8

9

MR. GARFIELD: Objection. Asked and answered. Go ahead.

10

11

12

A The question just doesn't make sense. I'm sorry. It just doesn't. I'm having a hard time understanding it. I mean, you're asking me -- We get trained to do certain things. Before I became a cop, I wouldn't go out here and put handcuffs on somebody for running a stop sign or having loud music. But in training, you learn how to do those things. When someone breaks the law, you learn what the law says, what the law is. In this case right here, okay, we learn different terms that we would use, okay, to put in a report or you learned what a -- you know, what different elements are in a crime and things of that nature. So I wouldn't have been writing this report if I wasn't a cop.

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1 So, yeah, we get trained different ways when we
2 become law enforcement officers and we go from
3 there.

4
5 MS. HARRISON: Hold on a second. I think I -- Can I
6 just step out and can we take a break for two
7 seconds -- two minutes.

8
9 (Short Break)

10

11 Q The only question I really have for you today,
12 though, is this. In this whole incident on October
13 24, 2005, is there anything that you would have
14 done differently?

15 A No, ma'am. I'm pretty clear about that in my
16 internal affairs thing as well.

17 Q Yeah. You say in your internal affairs that "I
18 would have not done anything differently in this
19 situation and I had supervisors confirm that while
20 on the scene there."

21 A Yes, ma'am.

22 Q All right.

23 A And I stand by that.

24 Q All right. So absolutely nothing you would do
25 differently?

1

2 MR. GARFIELD: Object to the form.

3 MS. HARRISON: You can answer that question.

4 MR. GARFIELD: Sure.

5

6 A I'll quickly say this. The Johnnie Cochran
7 statement was a stupid statement. And we've talked
8 about that already. We covered it. It was a
9 pretty emotional scene out there, okay. And we're
10 kind of back and forth. But the bottom line is
11 that it was just kind of a foolish statement to
12 make. And unprofessional.

13 But as far as the way everything else went
14 down, the arrest, everything like that, and it had
15 nothing to do with the arrest, yes, I would have
16 done everything just the same.

17 Q All right. When you say emotional, were you
18 emotional about this?

19 A Well, as a deputy Sheriff or a cop when you go to a
20 scene where you are wrestling around with somebody,
21 it does get amped up a little bit. And so as a
22 human being, you just got to, you know, -- But as
23 far as me being emotional, no, we were just -- it
24 was just -- it was an out of line statement and I
25 wouldn't make that statement again.

1 Q Were you angry with Mr. Martin?

2 A No. I mean, it's not personal. Again, I don't --
3 you know, this is the reason this has come back up
4 again that's why I have trouble remembering some of
5 this stuff unless it's in a report. I mean, the
6 next day we're back on the job doing the same thing
7 again.

8
9 MS. HARRISON: All right.

10

11

- - - - -

12

RE-DIRECT EXAMINATION

13 BY MR. MILLS:

14 Q What time did you come on shift that day?

15 A It looks like this happened about 4:30 in the
16 afternoon. So that means I would have come on at
17 seven that morning.

18 Q So did you work twelve hour shifts?

19 A Yes, sir.

20 Q All right. So you were getting towards the end of
21 your shift, is that right?

22 A Yeah, that'd be correct. Seven to seven, yes, sir.

23 Q Do you remember anything else that happened that
24 day?

25 A I don't recall. No, sir.

1 Q You weren't taking any alcohol or drugs that day,
2 were you?

3 A No, sir.

4 Q Are you on any kind of medication?

5 A Right now?

6 Q I'm sorry. Back on that day.

7 A Oh, I don't remember. I don't see why I would have
8 been, no.

9 Q Yeah. I mean, do you have any conditions that you
10 take medication on a regular basis?

11 A Oh, no, sir.

12 Q Do you currently take medication?

13 A No, sir.

14 Q All right. As part of your employment with the
15 Sheriff's Department, do they drug test you?

16 A Yes, sir.

17 Q Is that a random thing or just when you originally
18 come into employment?

19 A Random drug test.

20 Q Okay. Do you know what they test for?

21 A I think -- Again, I don't want to speculate too
22 much, but I think it's like marijuana, cocaine. I
23 don't -- I really don't know everything that that's
24 tested for.

25 Q Sure.

1 **A** **I know it's a urine test.**

2 **Q** **Do you know if they test for steroids?**

3 **A** **I'm not sure if they do or not?**

4 **Q** **Okay. In your body building activities, have you**
5 **been aware of people taking steroids in that sport?**

6 **A** **It's actually power lifting --**

7 **Q** **Excuse me, I apologize.**

8 **A** **No, it's okay. Not that I'm aware of, no.**

9 **Q** **So you're not aware of in the power lifting sport**
10 **people have been taking steroids? I mean, that's**
11 **news to you?**

12 **A** **No. I'm sure people do -- I mean, I'm sure people**
13 **do. As far as where I'm, you know, the people I**
14 **work out, I'm not aware of anybody that does.**

15 **Q** **Okay. And you don't take steroids?**

16 **A** **No, sir.**

17 **Q** **All right. Have you ever been tested for steroids?**

18 **A** **I don't believe so.**

19 **Q** **Do you take any muscle building supplements at all?**
20 **I'm not talking about steroids. I'm talking about**
21 **like Creatin or --**

22 **A** **I've take Creatin before. But at this point in**
23 **time, no, sir.**

24 **Q** **And how about back in 2005 in October, the time of**
25 **this incident?**

1 **A** I don't remember. I really don't if I was taking
2 it at that point in time or not. I mean, --

3 **Q** I'm sorry. I apologize.

4 **A** No, go ahead.

5 **Q** Did you ever, you know, go like to GNC or someplace
6 like that?

7 **A** Yes, sir.

8 **Q** Okay. And that's essentially muscle building
9 supplements and things to that nature?

10 **A** Yes, sir.

11

12 MR. MILLS: I think that's all I really want to
13 follow up with. Thanks.

14

15 (Short Break)

16 - - - - -

17 CROSS EXAMINATION

18 BY MR. GARFIELD:

19 **Q** Deputy Fields, Ms. Harrison, I believe, asked you a
20 line of questions about the form or forms of
21 identification that Carlos Martin allegedly
22 provided to you on October 24, 2005. Do you
23 remember that?

24 **A** Yes, sir.

25 **Q** Okay. And I think she provided you Exhibit Nos. 6

1 and 7 to Carlos Martin's deposition, two forms of
2 identification. Do you remember that?

3 **A Yes.**

4 Q And she asked you pertaining to those two exhibits
5 is, were one or both of those, does that accurately
6 depict what Carlos Martin showed you on the scene
7 on this particular afternoon. And I think you said
8 you weren't sure.

9 **A I wasn't sure which one, but possibly, yeah. One**
10 **or the other.**

11 Q Okay. Because he showed you a military ID,
12 correct?

13 **A Yes, sir.**

14 Q Okay. I'm also going to show you a copy of what's
15 marked -- this is kind of a copy of something else,
16 but was Exhibit No. 8 to the plaintiff's, Carlos
17 Martin's, deposition. And it shows front and back
18 of what purports to be some form of identification.
19 Do you see that in front of you?

20 **A Yes, sir.**

21 Q Okay. Do you have a recollection one way or the
22 other as to whether Carlos Martin showed you what's
23 depicted in Exhibit No. 8?

24 **A I don't know either way. I don't recall it.**

25 Q Had Carlos Martin showed you what's marked in

1 Exhibit No. 8 to you on the day in question, what,
2 if anything, would that represent to you as far as
3 what's -- what do you consider to be a valid
4 driver's license in South Carolina?

5

6 MS. HARRISON: Object to the form.

7 MR. GARFIELD: Go ahead and answer.

8

9 **A Okay. It wouldn't be -- Obviously, it's not a**
10 **South Carolina driver's license. But as I look at**
11 **it here, it looks like it's given from the**
12 **military. Give me one second here. I mean, it's**
13 **not a valid South Carolina driver's license, no.**

14 **Q Does that look like a driver's license that you**
15 **were familiar with that was issued by any other**
16 **state?**

17 **A No, because there's no picture on it or anything**
18 **like that.**

19 **Q Do you see any typed information on there, personal**
20 **typed information?**

21 **A No. It just says military endorsement.**

22 **Q Do you see where it say the person's name and**
23 **number and things like that and date? Are any of**
24 **those typed or is that handwritten?**

25 **A All that's handwritten.**

1 Q What, if anything, does that represent to you if
2 someone showed you something like that in Exhibit
3 No. 8?

4 A I mean, anybody could write that in. I mean, I
5 wouldn't take that as a driver's license. I'd
6 rather have a military ID than that just because at
7 least we have a form of picture -- a picture on
8 there. But this, I mean, --

9 Q You'd rather see a military ID other than this.
10 But did he show you anything that looked to you to
11 be a valid driver's license?

12 A No, he did not.

13 Q All right. Now, the question as far as you wanted
14 to talk to him about the loud music he was playing
15 in the car. I think you testified that the music
16 was extremely loud, is that true?

17 A Yes.

18 Q You testified and I think Ms. Harrison asked you
19 was it a thumping bass and a vibrating bass and you
20 said yes.

21 A Yes, I believe so.

22 Q Okay. And you recall that from October 24, 2005?

23 A That is correct.

24 Q Okay. Based on your qualifications and your
25 training and your experience as a law enforcement

1 officer in South Carolina, do you believe that the
2 actions of Carlos Martin in the car, okay, with the
3 thumping, vibrating bass and so on, was that breach
4 of the peace?

5

6 MS. HARRISON: Object to the form of the question.

7 MR. MILLS: Objection to the form of the question.

8

9 Q Okay. Do you believe that was a breach of the
10 peace?

11

12 MR. GARFIELD: And the objection's noted.

13

14 A I mean, the way he was playing his music, yes, that
15 was a breach of the peace.

16

17 MR. GARFIELD: I don't have anything further.

18

19

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20

FURTHER DIRECT EXAMINATION

21 BY MR. MILLS:

22 Q You indicated that the music was a breach of the
23 peace. Is that what I just heard you say?

24 A I mean, it could be a breach of peace, yes, sir.

25 Q Okay. Well, I think you just said it was a breach

1 of peace.

2 **A Yes, it was. I mean, --**

3 Q Okay. Did you tell Carlos Martin it was going to
4 be -- that you were stopping him for breach of
5 peace at that initial time based on that music?

6 **A No, sir. I said I was stopping him for a noise**
7 **ordinance.**

8 Q All right. Were there any other people out in the
9 parking lot at the time that you heard this noise?

10 **A I don't remember.**

11 Q Did anybody complain to you about the noise out
12 there at the time?

13 **A No, sir.**

14 Q Was there any indication that disrupted anything in
15 the public that you could see?

16 **A Oh, no, --**

17 Q Was anybody disturbed? Was anybody complaining
18 that -- Was anybody out there to even hear that?

19 **A I had no complaints about it, and there was no**
20 **calls about it.**

21 Q Okay. Did it tend to incite people to do violence
22 or to do something else?

23 **A I don't know.**

24 Q Did it incite people to disturb the community based
25 on this thumping noise?

1 **A** **I really don't know.**

2 **Q** Did you see it incite anybody?

3 **A** **No.**

4 **Q** And I'm sorry if I already asked you this. Did you
5 see anybody in the parking lot other than Mr.
6 Martin?

7 **A** **No, sir.**

8

9 MR. MILLS: Thank you.

10 MS. HARRISON: I don't have any further questions.

11 MR. GARFIELD: Nothing else. I would like to put
12 one thing on the record just to ask fellow
13 counsel. I think when we had a status
14 conference on the phone with Judge Anderson, I
15 think we -- I don't know if that was on the
16 record or not, but I think all of us
17 informally agreed at the very least that the
18 depositions, that the discovery depositions
19 that we're taking this week of Joseph Clarke
20 and Ben Fields would be the last discovery
21 depositions for them in this litigation,
22 including if this does go on to state court.

23 MR. MILLS: In other words, no, I'm not going to
24 notice him again. If we remand to state
25 court, I'm not going -- would not notice him

1 again for a deposition.

2 MS. HARRISON: Right. I agree. I mean, I think
3 that was our agreement.

4 MR. GARFIELD: Okay. I just wanted to make sure I
5 understood that.

6 MS. HARRISON: I mean, that doesn't preclude us from
7 noticing other depositions.

8 MR. GARFIELD: Well, I'm talking about of Ben Fields
9 and Joseph Clarke.

10 MS. HARRISON: Right. That's what I'm --

11 MR. MILLS: And I think what we talked about,
12 though, is even though they were taken here
13 they could be used in that litigation the same
14 as if they were taken there.

15 MR. GARFIELD: Yes.

16 MR. MILLS: In other words, the rules of evidence,
17 like if we had taken them in state court, I
18 can publish that deposition as a defendant or
19 something like that.

20 MR. GARFIELD: Consistent with whatever rules --

21 MR. MILLS: Whatever rules --

22 MR. GARFIELD: Whatever rules of evidence. Whatever
23 rules of court, yes.

24 MR. MILLS: Yeah. I mean, I wouldn't heed the
25 argument since that was taken in the federal

1 case, they can't introduce in this case.

2 MR. GARFIELD: Absolutely. And the same would go
3 for Tashiana Martin, Carlos Martin from our
4 side, too.

5 MR. MILLS: Correct.

6 MR. GARFIELD: Okay. I just wanted to make sure.

7

8

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9 (Whereupon, at 3:20 p.m., the deposition
10 in the above-entitled matter was
11 concluded.)

12

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[Errata page to be attached]

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1 State of South Carolina)
2 County of Lexington) CERTIFICATE

3 Be it known that the foregoing Deposition of
4 DEPUTY JOSEPH A. CLARKE was taken by Jennifer L.
Thompson, CVR;

5 That I was then and there a notary public in
6 and for the State of South Carolina-at-Large;

7 That by virtue thereof I was duly authorized
to administer an oath;

8 That the witness was by me first duly sworn to
9 testify the truth, the whole truth, and nothing but the
truth, concerning the matter in controversy aforesaid;

10 The foregoing transcript represents a true,
11 accurate and complete transcription of the testimony so
given at the time and place aforesaid to the best of my
12 skill and ability;

13 That I am not related to nor an employee of
14 any of the parties hereto, nor a relative or employee of
any attorney or counsel employed by the parties hereto,
nor interested in the outcome of this action.

15 Witness my hand and seal 26th DAY OF FEBRUARY,
16 2010

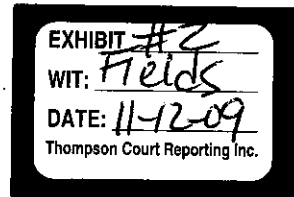


Jennifer L. Thompson, CVR

18
19 Notary Public for South Carolina
20 My Commission Expires: 8/14/2014

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22 material is reproduced as read or quoted by the
23 speaker.
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25

**RICHLAND COUNTY SHERIFF'S DEPARTMENT
INTERNAL AFFAIRS**



STATEMENT

State of South Carolina
County of Richland

Personally appeared before me this 2nd day of Nov. 2005 at 1:30 PM, an officer duly and legally authorized to administer oaths in the above named county and state aforesaid, comes one Benjamin Fields

Q: Why were you in Quail Run Apts.?

A: Dispatched to a call, suspicious person on property

Q: Did Mr. Martin pass you in the parking lot?

A: Yes

Q: Approximately how far did he travel past you before parking?

A: About 25 to 50 yards and then he parked

Q: Was his radio off at the time you approached him?

A: It was

Q: Did you have any complaints of loud music?

A: No

Q: Did you tell him you had complaints of loud music?

A: No sir

Q: As Mr. Martin passed you, did you observe anyone else in the area, on balconies, sidewalk?

A: No

Q: When you first approached Mr. Martin did you identify yourself and advise him why you wanted to talk with him?

A: No, not at first I asked him for his ID right away

Q: When you asked him for his ID did you tell him why you wanted his ID upon requesting it?

A: No

Q: Who was your FTO?

A: Larry Payne

Q: How were you trained to make verbal contact with individuals you make contact with?

A: Deputy Fields with the Richland County Sheriff's Dept., then I go into what ever it is I want to discuss with them

Q: Why not this time?

A: As fast as he was walking I wanted to get his attention

Q: Why did you elect to charge Mr. Martin in lieu of a warning of some kind, do you generally ticket everyone you hear playing loud music in his or her car?

A: I have never written a ticket since being on the road for loud music. I always give verbal warnings

Q: You stated on 10/24/05, you had control of Mr. Martin and he was not a real threat to you because you were much larger than him. Why were you calling on the radio for a taser?

A: A crowd was gathering, I was not sure who else may become hostile. His wife was real close to me and I did not know what she was going to do.

Q: During our initial conversation in regard to this incident on 10/24/05, you stated Mr. Martin had taunted you. Please explain how he did that.

A: Initially as he drove past me bobbing his head up and down looking straight in my eyes and when I asked for his ID and he stated " what the fuck for"

Q: When the telephone was taken from Mrs. Martin, she demanded it back. Why did you tell her she could have it back if she deleted the pictures in it?

A: They had said there were some possible naked pictures of her on the camera. We told her if she deleted them she had to delete all the pictures. The pictures do not do anything for him

Q: Did you make a comment or did anyone else make a comment something to the effect "you are just another notch on my belt"?

A: No, what I told him was that he was just another stat. What I meant he was nothing special. He was another person who broke the law and would be going to jail for it.

Q: Did you make a comment or did anyone else make a comment something to the effect "you are glad Jonnie Cochran is dead"?

A: I said that, my meaning was. They were talking about getting Jack Swirling. I said it was a good thing Jonnie Cochran is dead or they would get him

Q: Did you see a black female holding a small dog?

A: I saw a small dog, I don't remember if anyone was holding it or not

Q: Did you or anyone else threaten to put a black female in jail that was in the immediate area?

A: Yes, I didn't Dep. Clark did.

Q: Did he push her?

A: No

Q: Are you sure?

A: I know for fact he did not

This statement was made in the presence of Inspector Robert White of the Richland County Sheriff's Department Internal Affairs.

All of the above is the truth, the whole truth and nothing but the truth.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 2 DAY OF Nov 2005

NOTARY PUBLIC FOR SOUTH CAROLINA

Signed: [Signature]

Witness: _____

Witness: _____

9/2/11

